

FRAMES OF RELEVANCE AND DECISION-MAKING
IN CHILDREN'S HEARINGS AND JUVENILE COURTS:
A COMPARATIVE STUDY

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For Elsie, Colin and Christopher.

And for my mother, Annie R.T. Asquith.

DECLARATION

I hereby declare that the research
for this thesis is my own original
work.

Signed

C O N T E N T S

	<u>Page</u>
Acknowledgements	i
Abstract	ii
 <u>Section I</u> <u>Conceptual Groundwork</u>	
 <u>Chapter I</u> <u>Ideology and Relevance</u>	1
Social Control and Ideology	4
Professional Ideologies and Relevance	11
Relevance and Lay Ideologies	16
Available Ideologies	17
 <u>Chapter II</u> <u>Action, Punishment and Treatment</u>	23
Indeterminism, Determinism, Punishment and Treatment	23
Indeterminism, Determinism and Responsibility	26
Indeterminism and Responsibility	26
Determinism and Responsibility	31
Determinism and Responsibility: Compatibility Thesis	37
Punishment and Justification	42
Indeterminism and Punishment	46
Compatibility Thesis and Punishment	50
 <u>Chapter III</u> <u>Determinism, Responsibility and Treatment</u>	58
Determinism and Punishment	58
Crime and Determinism	64
Biological Determinism	66
Behaviourism and Criminality	69
Psychoanalytic Explanations	73
Sociological Determinism	77
Processual Determinism	82

<u>Section II</u>	<u>Conceptual and Historical Development of Justice for Children</u>	
<u>Chapter IV</u>	<u>Juvenile Justice: Conceptual and Historical Developments</u>	88
	The Juvenile Court - 1908 onwards	91
	The Juvenile Court - Constitution and Procedure	95
	The Juvenile Court - a basic conflict	100
	Post Ingleby Developments	111
	Scotland: The Kilbrandon Report	120
<u>Section III</u>	<u>Empirical Study</u>	
<u>Chapter V</u>	<u>Aims of the Empirical Study and Review of Research</u>	132
	Panel Members	132
	Juvenile Magistrates	136
	Major Hypotheses in the Study	140
	Juvenile Justice and Sentencing Research	143
	The Legal or Black Box Model of Sentencing Research	154
<u>Chapter VI</u>	<u>Frames of Relevance: Methodological Implications</u>	
	Theoretical Foundations	169
	Personal Construct Theory	172
	Development of Instruments and Pilot Study	180
	The Pilot Study	192
	Findings	195
<u>Chapter VII</u>	<u>Case Studies</u>	201
	Scotland: the Panel Area	203
	England: the Juvenile Court	206
	The Samples	208
	Case Studies: Panel and Court Scores	212
	Theories of Delinquency: Panel Members and Magistrates	216
	Judicial Considerations	218
	Case Studies: 'Within' Scores - Panel Area	231
	Case Studies: 'Within' Scores - Court Area	234
	Summary and Discussion	237

<u>Chapter VIII</u>	<u>Decision-Making by Panel Members and Juvenile Magistrates</u>	241
	Samples	241
	Decision-making in Court and Panel Hearings	245
	Case Report Analysis	247
	Importance of Specific Factors	254
	Reasons for Decisions	264
	Discussion	269
<u>Chapter IX</u>	<u>Court and Panel Hearings: Form and Content</u>	277
	Court and Panel: Basic Differences	277
	Interaction: Form	281
	Interaction: Content	288
	Parents and Children	295
	Legal Representation	297
	Police	301
	Clerk of Court and Reporter	301
	Panel Members and Juvenile Magistrates	302
	Symbolic Character of Hearings	304
	Case Studies, Case Reports and Content Scores	306
	Discussion	311
<u>Chapter X</u>	<u>Conclusions</u>	315
<u>APPENDICES</u>	Appendix I	322
	Appendix II	323
	Appendix III	330
	Appendix IV	333
	Appendix V	336.
<u>BIBLIOGRAPHY</u>		349

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ABSTRACT

Recent changes in social policy for delinquency has seen the retention of the juvenile court in England and the institution of a new form of juvenile justice in Scotland, the Children's Hearings. In both countries the responsibility for the making of decisions about delinquents rests with lay members of the community, magistrates in England and panel members in Scotland.

Given the lack of definitive statement as to 'need' or 'delinquency', information about delinquents will be assessed in terms of the 'frames of relevance' employed and the 'available ideologies' from which they are derived. From this starting point the aim of the thesis is to compare the making of decisions by panel members and magistrates operating within different organisational structures. The argument is presented in three main sections.

Firstly, an examination is made of conceptions of human action and how these relate the ascription of responsibility, the infliction of punishment or the offer of treatment. The determinist-indeterminist debate in philosophy is discussed with reference to available theories of delinquency causation.

Secondly, the development of juvenile justice is seen to be one in which there has been a move towards forms of delinquency control based upon determinist assumptions. A basic conflict, however, remains in reconciling a 'judicial' and a 'welfare' ideology.

Thirdly, in the empirical study, an examination is made of the extent to which panel members and magistrates, in the making of decisions, share similar frames of relevance and the implications this has for the practical accomplishment of juvenile justice within different organisational structures. The findings are discussed with reference to the earlier conceptual discussion.

SECTION I

CONCEPTUAL GROUNDWORK

CHAPTER I

IDEOLOGY AND RELEVANCE

The 1968 Social Work (Scotland) Act and the 1969 Children and Young Persons Act in England have been noted (May 1971) as indicating the acceptance of a treatment philosophy as a legitimate paradigm for dealing with delinquents. Nevertheless, a crucial difference between the respective systems of juvenile justice is that whereas in England the juvenile court system has been retained (though further restrictions were imposed on the prosecution of children and young persons), the changes in Scottish juvenile justice were characterised by more radical developments. A totally new form of proceedings, Children's Hearings, was introduced.

Thus though changes in both countries may reflect increasing acceptance of the idea of treatment rather than punishment for children in trouble, the developments in Scotland have been more fundamental with the abolition of the juvenile court. Moreover, the conflict inherent in the juvenile court system, highlighted both in the Kilbrandon¹ and the Ingleby² Reports, between the need to adjudicate on issues and the need to take into consideration the welfare of the child has been resolved by the separation of the two functions. The Children's Hearing, unlike the English Juvenile Court, is therefore no court of law and is concerned only with making decisions as to the need for compulsory measures of care. Although the legislation has therefore implemented essentially different systems of juvenile justice, both Acts are nevertheless the outcome of a common movement to penal reform which, as will be seen, had its roots in the last century.

The major assumption which provides the logic of this thesis, and which will be developed in the course of it, is that responses to delinquency - what is actually done about it - are determined in part by the manner in which delinquency is conceived. This holds good not only for official policy statements, but also for the assumptions about the causation of delinquency held by the members of agencies of social control.

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1. Report of the Committee on Children and Young Persons (Scotland). Edinburgh, H.M.S.O. 1964 (Cmnd.2306). Hereinafter referred to as the Kilbrandon Report.
 2. Report of Committee on Children and Young Persons. London. H.M.S.O. 1960 (Cmnd.1191). Hereinafter referred to as the Ingleby Report.

The 1968 Social Work (Scotland) Act and the 1969 Children and Young Persons Act have both been interpreted as the culmination of a process of continual redefinition and reconceptualisation of juvenile delinquency, which has in turn been accompanied by a trend towards removing delinquency from the scope of the criminal law and into the ambit of professional social work. (May 1971) Certainly, both the Acts espouse an approach to delinquency control based primarily on a treatment or welfare philosophy rather than on a punitive mode of intervention. And though the respective systems of juvenile justice have very different administrative and organisational structures, their guiding precepts are those consonant with an approach to dealing with delinquents in which the needs of the offender are more important than the offence, itself taken as being symptomatic of some underlying condition. Juvenile justice is then 'individualised' in that measures decided upon are to be determined by the social and personal background of the offender, for which purpose wide discretionary powers are necessary at all stages of the process. It is because of the width of discretionary powers conferred that the movement to measures for children based on welfare or treatment rather than punishment has also been accompanied by a debate on the respective merits of judicial or non-judicial forms of intervention.

A presupposition common to both Acts is that delinquency is a behavioural condition - rather than a simple legal or judicial category - which requires diagnosis and assessment prior to the application of appropriate welfare measures. The semantics of delinquency control are based upon medical analogies and metaphors as if delinquency were an illness and were pathological. As Rock points out, a danger associated with such usage of metaphor is that the metaphor becomes reality and that delinquency becomes sickness, disease, or illness. (Rock 1973, p.16) Nosological analogy becomes nosological reality and by this very means, delinquency control has increasingly come to be the responsibility of the 'experts'. (Bean 1976) Moreover, the true nature of the actual functioning of juvenile justice systems may well be obscured by a process of mystification (Matza 1964), whereby the logic of euphemism (May 1977) deflects attention from the true nature of juvenile justice administration. The concentration of attention upon the offender and the tendency to

construe 'needs' as if they were objective properties of individuals serve to obscure the problematic nature of the conceptual framework on which particular systems of juvenile justice are based. In particular:

" while the therapeutic strategy does not theoretically preclude the recognition of a connection between the private problems and public issues in practice, it frequently fosters a world view within which sense can be made out of phenomena without the necessity of critical reflection upon the nature of society's institutions." (Carson 1974)

The rhetoric of therapy and the quasi-medical terminology in which the government reports and white papers leading up to both the 1968 and the 1969 Acts are phrased endow the problem of delinquency control with an air of straightforwardness. Since, in accordance with the principle of individualised justice, the main criterion of intervention is considered to be 'need', the appropriate measures of care for dealing with delinquency are to be determined solely by reference to individual children's needs. But the identification of need is not such a straightforward process despite the recurrent use of the medical analogy and the involvement of agencies such as the social services which allegedly have the expertise necessary for the diagnosis and treatment of children's problems.

The official pronouncements contained in both the Seebohm³ and the Kilbrandon Reports recommended the reorganisation of social service agencies in accordance with the redefined role of social work in the meeting and prevention of social need. The relevance of this for juvenile delinquency was that delinquency was reconceptualised as being symptomatic of 'need' and therefore an appropriate area of social work concern. But the decisions as to the necessity of measures of care as envisaged in the two major reports were to be the responsibility of agencies which were not part of the social services. Thus, in England, children were still to be dealt with by the courts though welfare was to be a prime consideration; and in Scotland, though children could still be prosecuted and appear in court for other reasons, decisions in the main were to be made by the non-judicial body to be known as the Children's Panel. Though

3. Report of the Committee on Local Authority and Allied Personal Social Services. Cmnd. 3703, 1968.

the administration of juvenile justice is officially determined in both countries by a philosophy of welfare and need contained in the respective government documents, this does not preclude the possibility that in practice official objectives are supplemented or even substituted by other objectives. The existence of a formal philosophy of delinquency control does not imply that there is consensus as to how best to deal with delinquency as there may be competing philosophies in evidence in society at any one time. (Stoll 1968) Part of the purpose of this thesis is to examine the extent to which those involved in the operation and administration of juvenile justice share similar philosophies of delinquency control. As such, our concern is with the criminal justice process. In particular, we wish to argue that the selective and interpretative activity of social control agents, in this case panel members and juvenile magistrates, - governed as such activities will be by their systems of belief - are important determinants in the practical accomplishment of juvenile justice.

Social Control and Ideology

Research which attempts to relate the background characteristics of children with the decisions made in respect of these children depends entirely on inference when attempting to draw conclusions about how such decisions were reached. Thus, whereas different authors acknowledge the importance of the interpretative activity of control agents, they have not always adopted a methodological strategy appropriate for the analysis of how individuals within control networks assess information and make decisions. And whereas this approach, which typifies much of traditional delinquency and criminological research, treats the nature of the social control process as non-problematic, more recent developments acknowledge that

" the issues of defining and enforcing the [criminal] law are now regarded themselves as problematic and not objectively given." (Downes and Rock 1971, p.351)

" deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offence'. The deviant is one to whom that label has been applied successfully; deviant behaviour is behaviour that people so label." (Becker 1963, p.9)

Influenced by the development of a sociology of deviance, emphasis in criminological research has increasingly been directed away from the causes of delinquent and criminal behaviour. A major focus with the more recent developments has become the nature and mode of operation of the institutions of social control, not only in the maintenance but also the generation of definitions of deviance. Deviance has come to be seen as a quality that is ascribed rather than as a property inherent in a person and thus subject to rigorous scientific examination. The relocation of the focus of criminological studies on the institutions of control and on the process whereby deviance or criminality is ascribed does not seem to us logically to imply that aetiological studies are thereby theoretically futile. That needs careful argument. However, the significance of a sociology of deviance is the very fact that it does treat the social control process as problematic.

Identifying this process of ascription as a major determinant of deviance also relocates deviance or criminality in its complex relationship with legal institutions (Matza 1964) whereas positivist criminology had treated such processes as objectively given. In particular, positivist criminology, in lacking an appropriate basis in the sociology of law, ignored the very processes and conditions by which particular forms of behaviour had come to be the subject of criminal sanction. The invocation of the criminal law as a process of social control has now become a more important focus for sociological studies of crime and the law than are criminality and offenders.

Moreover, such a process may well be determined by factors other than the officially stated objectives of social control. The importance of the early chapters of this thesis in tracing the conceptual, and historical evolution of juvenile justice in England and Scotland is that they present a statement as to official and formal objectives in delinquency control. And

"such an examination will benefit by heuristically distinguishing the official goals of the court from its functions, particularly those which sociologists call unintended or unanticipated consequences of purposeful action." (Lemert, 1970, p.136)

The historical endowment of juvenile justice - for the purpose of the present argument, a commitment to a welfare-oriented philosophy - may well be fundamentally modified in its implementation since there is no easy translation of policy into practice. (Matza 1964) Comment has been made on the euphemistic nature of the language associated with therapy and individualised justice and their distortion of the true nature of the administration and organisation of crime control. (Allen 1964; Tappan 1949) Nor has displacement of officially-stated goals or objectives (Rock 1973) passed unnoticed in the context of other welfare institutions. Kogan, for example, reviews the traditional approach to studying organisational structures in which they were viewed as if they pursued objectively-defined goals and as if the organisation operated monolithically. (Kogan 1971) He criticises the failure of such an approach to attach significance to the subjective ideas held by members of such organisations for the actual implementation of formal policy statements. That is, the ideological orientations of members of relevant organisations affect whether or not, or to what extent, the objectives contained in the formal or official ideology are actually realised. (See also Platt 1975)

It is a major assumption of this thesis that the informal working ideologies of those responsible for implementing a treatment or welfare-oriented philosophy in the respective systems of juvenile justice in Scotland and England will affect the way in which, or the extent to which, the policies stated in the relevant official pronouncements have actually been put into effect. Therefore by identifying the ideologies of delinquency and deviance maintained by the various agents of social control, we can identify possible sources of strain in the social control network. (Stoll 1968) Further consideration must therefore be given to the notion of ideology, and its implications for the administration of juvenile justice in Scotland and England.

We shall follow Smith in his definition of ideology as

"a configuration of relatively abstract ideas and attitudes in which the elements are bound together by a relatively high degree of inter-relatedness or functional interdependence." (Smith, 1976, p.50)

Moreover, he adds that an ideology may be (a) formal as an abstract system of ideas or (b) informal as an operational philosophy which organisational members employ in determining action and decision-making. The philosophy ('formal ideology') underlying the two Acts in question, based on a reconceptualisation of delinquency as symptomatic of need may well be mediated in practice by the operational philosophies (informal ideologies) of those responsible for implementation of the legislation. This is particularly important for a number of reasons.

Firstly, official statistics relating to the number of different disposals reached by panel members and by magistrates, such as those contained in the Annual Social Work Scotland Statistics and the Criminal Statistics for England and Wales, can tell us relatively little about the process by which decisions in terms of need are made about children. Official statistics are not

"accurate indicators" of the level of need or the extent of criminal behaviour in the community. Indeed, it has been argued that such statistics may reveal more about the circumstances in which they were produced. (Kitsuse and Cicourel 1963; Hindess 1973) Official statistics are construed as the outcome of successive stages of selection and identification by different agents within the social-control network, of those children deemed to be 'in need' or 'delinquent'. With particular reference to juvenile court practices, Tappan has indicated the influence on the administration of juvenile justice of the different interpretations by personnel working within an organisational structure with wide terms of reference consonant with discretionary decision-making. Cicourel criticises traditional sociological theories of deviance in which

"there is no attempt to show how the 'man-on-the-street' and law-enforcement officials, through the former's conception of 'wrong doing' and the latter's policies and day to day decision-making are key elements in how juveniles come to be known as delinquent."
(Cicourel 1963, p. 31)

The significance of the ideological orientations or operational ideologies of law enforcement personnel has also been recognised in the context of police work (Skolnick 1966; Bordua 1967) and prosecution (Blumberg 1967; Chambliss 1974) where the notion of police and

prosecutors operating within the strict parameters of legally prescribed procedures and relevances (Box 1971) is shown to be a misrepresentation of policing and prosecution.

Though within the formal ideology espoused by government reports and underlying the particular forms of delinquency control introduced by the two Acts, the main criteria of intervention are based on 'need' and the need for compulsory measures of care, neither of the reports provides an adequate conceptual framework by which need can be defined. That is, though the logic of delinquency control is the meeting of need there is a failure to provide definitive statements as to what actually constitutes social need and how it can best be assessed and met. Had only 'professional' social agencies been involved in the social control network then such an omission would not have been quite so significant in that the operational definitions of need would have been provided by the ideological orientation of the profession concerned. (Though even 'professional' conceptions of need are subject to diffuse interpretations.) But the development of delinquency control in the context of both the 1969 and the 1968 Acts allowed lay persons, panel members in Scotland and magistrates in England, to have the ultimate responsibility for decision-making about children in need, at least in the first instance. The absence of a definitive statement as to 'social need', it is suggested, means that prime notions such as 'need' and 'delinquency' obtain their very meaning only in the process of ascription by the various personnel operating within the social control network. Conceiving of delinquency or need as social constructions rather than simply as properties intrinsic to individuals necessitates a closer examination of how decisions and compulsory measures of care are reached by agents within that network.

An equally important reason for considering the significance of the operational ideologies of those personnel responsible for the administration of juvenile justice is that there is an essential difference between a notion of justice in theory and the notion of justice as an operational concept. Blumberg (1967) for example, suggests that the criminal justice system in the U.S.A., though theoretically guided by a due-process ideology, is primarily oriented to the depersonalised goals of 'production'. The modification of the formal ideological prescriptions are a consequence of the fact that -

"The rule of law is not self-executing. It is translated into reality by men in institutions. Traditional constitutional elements of criminal law, when placed in the institutional setting of a modern criminal court, are reshaped by a bureaucratic organisation to serve its requirements and goals." (Blumberg 1966, p.5)

In considering the status of key individuals in the administration of juvenile justice, conceptual niceties give way to practical difficulties. It is the very possibility of disagreement with the rationale behind juvenile justice systems that differentiates between a notion of justice in practice and in theory. For the purposes of this thesis, we are more concerned with how justice is practically accomplished through decision-making than with the question of what is the conceptual framework underpinning a particular notion of justice.

Social policy in general and penal policy in particular (Rock 1973) is only realised through its implementation within an administrative framework. In the process of implementation, policy objectives and the means of achieving these may be redefined by the individuals operating within that framework since there is no easy translation of policy into practice. A degree of strain (Stoll 1968) may then appear between the objectives of the formal ideology on which the policy is based and the objectives set by the informal working ideologies of those responsible for its implementation. This is particularly so in a system of justice where the lack of definitive statement, theoretical or legislative, as to children's needs is accompanied by wide discretionary powers. Against such a background, despite the promise of the legislation, concern has been expressed about the extent of such discretionary powers available to the members of the systems of social control with particular responsibility for children. (Matza 1964; Fox 1976; Grant 1976) The movement towards an ideology of welfare or treatment has meant that the criteria on which decisions about children are based will necessarily be more diffuse than those established by an ideology of punishment. Not unexpectedly, juvenile justice may then become riddled with 'rampant discretion'. (Matza 1964) And since the principle of individualised justice according to needs requires examination of these diffuse social personal or environmental characteristics, the relation between the disposition and the

criteria of judgment is not easily ascertained. This is the danger of examining the process of decision-making only by making inference as to the operation of organisational or administrative structures from official statistics without assigning significance to the role of operational ideologies in determining and generating information summarised in such statistics.

As an aid to reaching decisions under the principle of individualised justice a wealth of material is collated in respect of children. But information to be used in decision-making has to be interpreted and in the process of interpretation, the individual has to be able to identify what is for him information relevant to the purpose of decision-making. The relevance ascribed to information for this purpose will differ from individual to individual, from agency to agency since, though all may be oriented to the same system of juvenile justice -

" the articulation of that orientation with actual events and discussions is an empirical issue basic to sociological interests in social organisation."
(Cicourel 1968, p.45)

The emphasis on organisational members' operational ideologies has hitherto mainly been concerned with 'professional' ideologies. (Strauss et al 1964; Silverman 1971; Smith 1977; Hardiker 1977) But what is particularly interesting about juvenile justice as realised in the Hearing and Court system of Scotland and England respectively is that, despite the medical and technical rhetoric associated with a welfare ideology that pervades official literature, responsibility for decision-making about children in need rests finally with 'lay' persons. That is, the lay panel members in Scotland and the lay magistrates in England are charged with the responsibility of making decisions about children, though professional agencies are involved in the important functions of the assessment of need and the execution of welfare measures. Indeed the differences in the Scottish and English legislation suggest that even decisions as to welfare have become the responsibility of the English social services department with a consequent loss of power for the magistracy (see below).

There is a difference of approach to decisions about children as between 'professionals' and 'lay' people. An examination of this

difference shows how important is the fact of the lay status of the decisionmakers. And by focusing on the issue of what constitutes relevant information as a basis for decisions about children in need, sources of ideological conflict can be identified in a system where sociological and philosophical interests converge. In particular, the move at a formal level from a punitive, judicially-oriented philosophy of juvenile justice to a more welfare-oriented philosophy does not preclude the possibility that the operational ideologies of those responsible for the disposal of cases do not completely agree with official pronouncements and intentions.

Professional Ideologies and Relevance

In an attempt to minimise the injustices that can arise from discretionary decision-making, Davis (1969) seeks to establish a means whereby the exercise of discretion can be brought within the precise nature and relationship of the criteria upon which decisions are made from a legal and a welfare perspective. (Titmuss 1971) The dangers associated with discretionary decision-making in the context of social policy in general have initiated a concern to establish appropriate parameters to restrict the scope of discretion; and in juvenile justice in particular have promoted a constitutionalist revision of the mode of state intervention in juvenile delinquency, especially in the United States. (Faust and Brantingham 1974, Part IV) But even in this country, there has been concern that the gradual move towards an approach to delinquency control based on a welfare philosophy has been at the cost of adequate legal protection. The status of children's rights (MacCormick 1974; Watson 1976) makes the imposition of measures in terms of need a particularly complex issue.

We see that in the development of juvenile justice in Britain, the initial assumption of jurisdiction by the courts over cases of neglect and deprivation was the beginning of a process in which delinquency was redefined as being an appropriate area for social-work intervention. Accordingly, both in terms of size and responsibility, the social services have expanded considerably and their contribution to delinquency control has been emphasised by the fact that two government reports urged the reorganisation of the social services in an attempt to deal better with delinquency. But even where 'professionals' such as social workers, psychiatrists and

psychologists are involved in a system of juvenile justice, this does not necessarily imply that all share the same approach to the assessment and treatment of behavioural problems. Though any system of individualised justice necessarily entails wide discretionary powers (Campbell 1977), the diffuse nature of the characteristics that could be taken as a basis for decision-making and the lack of definitive objective statements as to need (Smith 1977) suggest that how delinquency is conceived of in differing professional orientations may be determined by among other things the ideological basis of the stance adopted by particular professions. To the social worker, the criminal may be seen as a patient requiring treatment; to the lawyer, a responsible law breaker who ought to be punished.⁴ Though the differing professions may be able to justify particular decisions in terms of professional judgment within the ideological orientation of the profession towards, in this case, delinquency control, this implies a lack of shared criteria and justification between different professions.

Perhaps we should note at this juncture the difficulty in actually defining what is meant by 'professionalism' though Johnson (1972) comments on the attraction to particular occupational groups of being considered 'professional' -

" professionalism is a successful ideology and as such has entered the political vocabulary of a wide range of occupational groups who compete for status and income." (Johnson 1972, p.32)

Though 'socialisation' into particular forms of knowledge and the acquisition of specific skills and expertise, mainly through training provides suitable qualifications, there is more to professionalism than that. Prestige and status are indeed important elements. Thus what Etzioni (1961) and Pearson (1975, p.16) can refer to as the semi-professions may well adopt the quasi-medical, technical terminology of more established professions such as psychiatry or even law, but have not yet attained an equivalent position of status. Social work is a classic example of this.

It would be naive, however, to assert that within professional groups it would be possible to identify a single dominant ideology

4. A particularly significant discussion of the fundamental difference in orientation of such as social workers and lawyers is to be found in the writing of G.H. Mead. (1918)

expressed in the practical accomplishment of their task. Even within groups there is the opportunity for ideological conflict, the best example perhaps being of social work (Smith 1977; Hardiker 1977), though even in other contexts, particularly the medical and psychiatric fields, there is empirical evidence for this. (Strauss et al 1964) [On a more theoretical level, Schutz argues that the social scientist also operates in a system of relevancies which he shares with others in their common everyday lives (Schutz 1967).] Recent debate and controversy about the methods adopted in one of the Scottish List D schools is as much indicative of ideological conflict about how to deal with children as it is about the relationships between the personalities involved. However, there seem to us to be some important distinctions that can be drawn being a member of a 'professional' group and being a 'lay' person and it is to a development of this that we now turn.

A distinction can be made in relation to the types of checks which may operate on discretionary decision-making by considering administrative (Adler 1976) and 'professional' decision-making. Under a model of administrative decision-making, decisions are made with reference to a body of rules and regulations and the ultimate justification of the decision is that it has been made in accordance with those rules and regulations. Decisions made by a children's hearing or a juvenile court can then be judged in terms of whether they meet the statutory requirements governing procedure. But under a model of professional decision-making the ultimate justification for a decision is that the decision was made through the correct exercise of professional judgment. The criteria on which a decision is made are drawn from a stock of professional knowledge and though the professional may exercise discretion, some check can be made on his decision by reference to that stock of professional knowledge which creates for him a frame of relevance. Information has to be subjected to a process of interpretation by which only that which is relevant is sifted out. The relevance of information about children's needs depends not so much on the existence of identifiable objective criteria as on the conceptual framework underpinning the selective or interpretive activity of individuals which for the professional rests on four main assumptions. (See Berger and Luckmann 1966, p.130 ff.)

Firstly, there must be a body of knowledge that accounts for delinquency and need. Secondly, there must be a corpus of diagnostic concepts indicative of clearly defined symptoms. Only by appropriate diagnosis can a condition be identified. Thirdly, there must also be accepted measures for treating identified conditions. Finally, there must be some statement as to the objectives sought. Interpretation of information about children suspected of being in need will be made by reference to that frame of relevance provided by the knowledge, diagnostic tools, accepted measures and objectives from which the individual derives his professional identity.

A frame of relevance provides the professional with a set of generalisations or typifications about delinquency which allows him to identify particular cases as coming under a more general category. Definitions of need and assumptions about causation then relate to a variety of factors such as broken home, deprived areas and so on, depending on the particular professional stance. Thus, the process of interpretation of need against a particular frame of relevance allows the professional to make sense of a welath of potentially ambiguous information. But he is also able thereby to construct an explanation of delinquency in particular cases and though the assumed causes of delinquency may have little empirical validity, they do at least have heuristic value. That is, whether they truly are the causes of delinquency or not has less significance than the value they have for the individual by allowing him to make sense of and impose explanations and order on information in his role as professional. In this way, a degree of clarity and routine is imposed on the decision-making process. Moreover, a frame of relevance means that discretion is exercised in accordance with particular professional knowledge and though there may be room for disagreement as to professional decisions and their appropriateness, a common frame of relevance provides the basis for shared understanding of a problem. Decisions can then be checked by reference to the professional standards and knowledge of the profession, though, as in the case of social work, some professional bodies are characterised by a lack of consensus as to knowledge base and practice.

But the very lack of objectively relevant criteria as to the causes of delinquency and the needs of delinquent children has

implications for the relationship between different professions within the social control network, e.g. between the police, social worker, psychiatrist, psychologist and so on. The lack of a consistently defined frame of relevance means that they do not share a common understanding of behavioural problems. Because relevance is a quality that is ascribed to information and not an intrinsic property of information, the operation of juvenile justice based on welfare is circumscribed by competing frames of relevance. Because of the existence of a number of different professions within the organisational network for administering juvenile justice, and because of the lack of a consistent conceptual framework underlying the legislation, each profession operates in terms of its own background knowledge, diagnostic concepts and objectives. An important medium through which members of occupational groups are introduced to the ideological orientation of their profession is through the training and recruitment programme. The new recruit or novice (Bankowski, 1977, Chp.4) is 'socialised' and it is this process of professional socialisation which lends solidarity to occupational structure since -

"with a generally homogeneous group there tend to be fewer divergent points of view which would clash over the meaning of facts and thus give rise to interpretations on a more theoretical level." (Mills 1963, p.527)

Matza has also referred to the importance of training and professional background of these personnel operating within a system of juvenile justice characterised by 'rampant discretion'. (Matza 1964)

However, the interpretation of children's behaviour and the decision as to the appropriate measures for dealing with behavioural problems made by the police, social workers, psychiatrists and so on may differ more fundamentally in their acceptance of different frames of relevance.

But more germane to our purposes is the point that discretion is a contextually defined concept by which I mean that it cannot be exercised in vacuo, but must always be in reference to a particular frame of relevance. In this way, limits can be placed on the exercise of discretionary judgment by reference to the body of professional knowledge from which different agencies derive their

professional identity. Thus, although the policeman and the social worker both have considerable discretionary power, it is exercised within different professional contexts and checks on decision-making can be made in terms of the principles of police and social work respectively.

However, since no frame of relevance, whether it be that of the social worker, psychiatrist, policeman, or psychologist, has necessarily any prior claim to validity:

" contradictions in the ideologies of deviance held by various agents will create strains in the social control network." (Schur 1971, p.166)

The difficulty confronting the panel member and the magistrate is that not only are they not professionals, claiming allegiance to a particular frame of relevance (though as we shall see, the distinction between 'professional' and 'lay' status is not an easy one to sustain), they are nevertheless required to make decisions on the basis of information provided by the various professions. How then does the 'lay' panel member ascribe relevance to information provided by the main agencies in the social control network and what implications does this have for the practical accomplishment of juvenile justice?

Relevance and 'Lay' Ideologies

A professional frame of relevance not only provides a means of interpreting and explaining behavioural characteristics of children but also provides a means whereby professional expertise can be acquired through a process of learning and training. The social worker and psychiatrist are both seen as professionals in their own right in as much as they have sufficiently acquainted themselves with the body of knowledge, diagnostic concepts and accepted treatment measures of their respective professions. In other words, a frame of relevance determines not only who is to be treated but also who is to be responsible for deciding on and administering treatment. However, despite the rhetoric of therapy that pervades delinquency control, those responsible for decision-making, panel members and magistrates, are in fact 'lay' persons. For the purpose of this thesis, the use of 'lay' is slightly different from that commonly employed in the literature. 'Lay' is here taken to refer to the status of organisational members of the respective systems of juvenile justice who are not 'professional' members of the social-

control network. In this respect such usage differs from that in which the term 'lay' is used to refer to the operational ideologies of those in the social-control network, be they professional or not. Thus Cicourel can refer to the lay theories of delinquency sustained by the police, social workers etc. (Cicourel 1968) For expediency, 'lay' ideologies here refers to the operational philosophies of those involved in the system of juvenile justice for whom professional status is not claimed.

As we shall argue, the lay status of panel members and magistrates is of particular importance for a number of reasons. Firstly, panel members and magistrates are responsible for making the decision as to whether or not a child is in need of compulsory measures of care. Secondly, though panel members and magistrates are not themselves professionals, they nevertheless have to assess information presented by different professional agencies and individuals, none of whom may necessarily share the same orientation to the assessment of children, particularly children who commit offences. Thirdly, and related to the last point, panel members and magistrates have the opportunity of assessing information contained in the different reports and of supplementing this with information gleaned from discussions with the child and his parents or with certain of the professionals in the course of hearing a case. For these tasks, panel members' and magistrates' 'lay' ideologies of delinquency control are significant in their impact on discretionary decision-making. But unlike the professional, the lay person has no professional stock of knowledge which provides a frame of relevance and for the purpose of examining the nature of lay ideologies and frames of relevance, we shall employ the notion of available ideologies.

Available Ideologies

As a 'lay' person, the panel member and magistrate has access to what has been referred to as

"a socially approved system of typifications and relevances." (Schutz 1970, p.121)

on which depends everyday social interaction. That is, for the purpose of ordinary social intercourse, he shares in a stock of public knowledge which allows the individual to select those elements in a social situation which are relevant for adopting particular courses

of action. Much in the same way as a body of knowledge provides for the 'professional' a frame of relevance, so does this stock of public knowledge provide a means of interpreting and explaining events in the world. Indeed, through typifications certain events in the world can be anticipated, allowing responses to such events or patterns of events to be constructed. Similarly, it provides a means of shared communication and understanding. But whereas the professional frames of relevance can be acquired through learning and training, the frame of relevance providing an interpretative scheme for the 'lay person in everyday life originates in the biographical situation of the individual'. (Schutz 1970) The formation and use of commonsense concepts also allows for a variety of 'lay' frames of relevance as a consequence of the varieties of individual experience.

This is particularly important since a number of studies have revealed the social class bias of membership of the Children's Hearings and Juvenile Court. (Smith & May 1971; Hood 1962) The implication of this is that the administration of juvenile justice is mediated by assumptions of a group broadly similar in their values about delinquency control. However, though for the purposes of communication and understanding in the wider social context, 'lay' frames of relevance are fundamentally similar because of their origin in the stock of publicly-available knowledge, the individual's own experiences create for him a frame of relevance which is not totally public.

But in relation to his role as panel member or magistrate, through his own private frame of relevance, the individual brings to the hearing situation public and lay conceptions of delinquency, its causation, and how to deal with it. The suggestion that delinquency control operates in practice in terms of a treatment philosophy is fallacious since this ignores the social context of the decision-making process. The actual implementation of a treatment philosophy in the form of a court or hearing system is in particular mediated by values and assumptions about delinquency employed in the broader social context.

Such values and assumptions though not the same as more 'scientific' or 'professionally' respectable statements may nevertheless be the source of lay theories which are -

"reflections and refractions of professional theories past and present, which have been transmitted like rumours from the writing of 'experts'" (Box, 1971, p.180)

In this way, 'scientific' or professionally respectable theories of criminality or delinquency, its identification and its treatment provide what may be referred to as 'available ideologies' from which lay versions may be derived.

We have already discussed (p. 6 ff.) the notion of ideology that is employed in this thesis. An 'available' ideology is one that individuals can draw upon or that can provide the source for frames of relevance pertinent to different social practices. In relation to panel members and magistrates the available ideologies with which we are concerned are those that contain assumptions about delinquents, delinquency and its causation. In this respect, quite apart from the commonsense notions of delinquency that are publicly available for absorption into ordinary consciousness, panel members and magistrates may well be introduced to others in acquiring the skills and expertise necessary in fulfilling their roles in the respective systems of juvenile justice.

Panel members, for example, are not expected to be expert social workers yet they are required to undertake training which in the early days of the Hearings system heavily involved social workers from local authorities and others from the field of child care in general. Of particular significance is the fact that many of those who contributed to the training of panel members also contributed to a volume that was to have as one of its objectives the provision of a training manual for panel members. (Martin and Murray 1976.) Thus in terms of the content of the training programme the ideologies available to panel members in the course of acquisition of their skills were heavily imbued with social work (specifically case work) principles and reflected assumptions about delinquency that were causal in nature. (See chapter on Theories of Delinquency by R. Forrest in Martin and Murray eds.)

For magistrates, however, though the training programme did obviously include contributions from social workers, psychiatrists and allied professions, a much greater emphasis than in Scotland was placed on legal or judicial considerations. (See Sanders, 1973.)

The concern with responsibility for an offence and questions of guilt or innocence means that a great part of the training afforded to magistrates focuses on the nature of the offence and the nature of the child's involvement in it. Magistrates are indeed specifically encouraged (Sanders 1973) to associate the nature of the offence with the level of deliberateness or intent that can be ascribed to the child. The "heinousness" of offences can, for example, be used to rebut the presumption that the child cannot be held responsible since it is indicative of intent. In terms of the ideologies available to magistrates in the course of training a greater emphasis is evident on explanations of delinquency couched in terms in which responsibility is ascribed. The extent to which the different ideologies available are reflected in decision-making by panel members and magistrates is, of course, an empirical question to which we shall return later.

'Available ideologies'

mediated and reinterpreted by agents of social control then, either implicitly or explicitly, provide the basis of the ideological orientation for such persons and a means for the identification of those deemed to be delinquent or criminal. The epistemological respectability commonly associated with scientific or professional theoretical statements about human behaviour is diminished when the actor is himself considered as a social theorist. (See Giddens 1976; Schutz 1970; Cicourel 1968) For

" the relation between technical vocabularies of social science and lay concepts, however, is a shifting one; just as social scientists adopt everyday terms - 'meaning', 'motive', 'power', etc. - and use them in specialised senses, so lay actors tend to take over the concepts and theories of the social sciences and embody them as constitutive elements in the rationalisation of their own conduct." (Giddens 1976, p.159)

Giddens then goes on to suggest that though causal generalisations in the social sciences are similar to natural scientific laws, a crucial difference is that they 'depend upon reproduced alignments of unintended consequences'. (Op. cit., p.159) This has several implications for a system of juvenile justice in which the main criterion for intervention is the need for compulsory measures of care.

Decisions about the need for compulsory measures of care are made within the context of moral discourse. Pearson (1975, p.15) has pointed out that the 'medicalisation' of delinquency was assumed to have placed the problem of delinquency control outwith the realms of moral and political discourse, since decisions as to treatment measures were seen to be the responsibility of the technically competent. A similar comment has been made in relation to 'mental illness' where the conceptual problems posed by a logic of treatment are not unlike those raised by the notion of treating 'delinquents'. Questions are asked as to whether -

" the only relevant criterion for evaluating the success of therapy is in terms of its efficiency in achieving this 'objectively defined' goal, and therefore that moral considerations do not play any part." (Sayers 1973, p.2)

Such a position ignores two things. Firstly, a decision always has to be made at some point as to which behaviour is to be treated. No amount of research evidence can itself sustain an argument that particular forms of behaviour are indicative of a need for treatment since, in relation to delinquency at least, some decision has to be made first of all about which forms of behaviour are to be called 'delinquent'. (See, for example, Bean 1976) The decision is essentially a moral one and conflicting arguments are essentially indicative of conflicting moral viewpoints, the outcome of which may be a social policy with a strong moral basis. (See Duster 1970) Secondly, and more importantly for my purposes, at the level of implementation, actual decisions about particular cases may reflect different moral stances.

We suggested that because decisions about 'need' are not made in vacuo, the meaning attributed to delinquent behaviour is influenced by the lay and commonsense notions of justice and theories of delinquency employed by the panel members. But though there may be agreement that 'need' is the main criterion of intervention, the relativity of the notion of need means that there may be disagreement as to what actually constitutes 'need'. This may be reflected in the fundamental disagreement between the different agencies within the control network as between individuals whether they be 'lay' or 'professional'. Because professionals are themselves members of a community, the adoption of a professional frame of relevance does not preclude the possibility that this too is also influenced by 'lay' conceptions of delinquency. But though delinquency control has apparently become the realm of the 'expert' (Gillis 1974; Bean 1976), both panel members and magistrates were nevertheless still to be 'lay' persons.

As we shall later see more fully, a problem for juvenile justice has always been that of attempting to deal with children who offend by means of a process ultimately derived from criminal justice in its application to adults. It would be subject therefore to the rules

of evidence and criminal procedure. In reference to Western criminal policy, Duster (1970) identifies the conflict in a criminal justice system where the individual is treated as a rational, responsible being up until the point of conviction. But from the point of sentencing onwards, he is subject to measures and professions whose conceptual base reflects a philosophy of pathology, or more broadly, determinism. There is then an ideological clash between the more judicially or legally oriented ideology of the initial stages of proceedings and the welfare ideology underpinning the later ones. The separation of adjudication and disposal in the Scottish system where the need for compulsory measures of care is decided upon by panel members was an attempt to resolve this. Similarly, the introduction of care and criminal proceedings in the 1969 Children and Young Persons Act, though not so radical as the Scottish developments, was also made in recognition of this ideological clash. But rather than complete separation, in England

"the model was, in crude terms, one of social pathology for the younger child, but more classical assumptions about the choice of evil for the older child" (Bottoms 1974, p.324)

The criminal law, even in its application to children where youth was recognised as a mitigating factor, assumed a high degree of personal responsibility, a fact which had received considerable criticism in the 1960s. (Kilbrandon Report, esp. paras. 60, 71, 72.)

But also in the course of everyday social interaction, for the purpose of ascribing praise, blame or punishment, it makes a difference whether an act had to occur or not and the designation of responsibility, conformity and deviance depends on this common-sense assumption. (McHugh 1970) Some concept of agency is necessary for the judgment of behaviour and it is in this respect that questions about the justice or otherwise of the way in which we deal with those who do wrong is inextricably linked to particular notions of human action.

Though the rhetoric of therapy theoretically removes the issue of delinquency control from the realms of moral discourse, lay theories of justice and delinquency derived from that stock of knowledge about delinquency causation may introduce an element of moral judgment to the juvenile justice process. In the two chapters which

follow we will consider different conceptions of human action and the way in which these are accommodated within different philosophies of delinquency or crime control. This is for a number of reasons.

Firstly, it seems to us that a number of authors operate on the assumption that treatment or welfare and punishment are diametrically opposed. We wish to argue that this is not the case and that the relationship between treatment and punishment is conceptually complex.

Secondly, the history of the development of juvenile justice has not been one of a simple trend away from punishment to treatment.

Finally, and importantly for the present thesis, the different notions of action, punishment and treatment provide what we have referred to as 'available ideologies' from which lay notions of delinquency control are derived. Whereas the juvenile justice systems in this country have developed in accordance with a more welfare oriented philosophy, paralleled by the expansion of the role played by 'experts' or professionals, 'lay' persons occupy crucial positions. It will be an objective of this thesis to examine empirically the extent to which lay persons operating within two organisationally and structurally different contexts employ notions of delinquency control derived from similar available ideologies.

CHAPTER II

ACTION, PUNISHMENT AND TREATMENT

Indeterminism, Determinism, Punishment and Treatment

Children have always posed conceptual problems for the law and no more so than in the context of the criminal law. Perhaps one of the clearest examples of this has been the history of attempts to present a definitive statement as to the age at which children can be held as being criminally responsible. The difficulty of stipulating the age at and beyond which children can be held criminally responsible and liable to punishment crystallises the more general problem of deciding when someone can be held morally responsible. It is with the judgment of action and behaviour and the ascription of moral responsibility that we shall be concerned with here.

In our ordinary employment of language, moral discourse focuses on actions and more especially on actions that in some way have deviated from accepted norms and standards. Questions of moral responsibility arise when we feel that an action has been performed which ought not to have been, or that an action has not been performed which ought to have been. As Austin (1961, p.128) says -

"the situation is one where someone is accused of having done something, or (if that will keep it any clearer) where someone is said to have done something which is bad, wrong, inept, unwelcome, or in some other way untoward."

Somebody against whom such an accusation is made may defend himself in three ways: 'X is wrong, but I didn't do it' - denial; 'although X is normally wrong, there were special circumstances which made it the right thing to do in this case' - justification; 'although X is wrong, I am not to blame for doing it, because of these special circumstances' - an excuse. An understanding of the last category, excuses, Austin held to be of special importance for understanding the idea of responsibility: excusing conditions exclude responsibility.

Though Arendt (1958) accepts, with Austin, that excuses lessen the costs in human relationships for those whose behaviour is untoward, she suggests that men have devised prospective as well as retrospective strategies. Prospectively, by commitment and by promising, we reduce the risk of uncertainty by imposing duties and

obligations on ourselves and on others. Excuses and justifications are retrospective in that they serve to negate responsibility for action after the event. However, where we disagree with Arendt is in holding that excuses and justifications have to be known and be acceptable beforehand since:

"a further implication of taking 'excuses' as central to moral discourse is that morality emerges as both conventionally traditional and pragmatically mundane, and consequently as having very definite limitations."
(Pitkin 1972, p.150)

Both the formal and the material nature of excusing conditions are topics for moral discourse. It is obvious that ordinary everyday language does not display consensus over the material nature of excuses, that is, what counts as a good excuse (though we may all agree as to their logic or form). Similarly, moral philosophers themselves display no little disagreement about the relevance of the factors which they are prepared to accept as absolving an individual from responsibility for his actions. The lack of consensus does not merely reflect different moral positions as such. It is more basic than that. A fundamental problem for discussions about judgments of people's behaviour is that of understanding exactly what is meant by 'action'. In this respect, as we shall see below, the so-called Free-will/Determinism debate finds its parallel in the sociological literature where epistemological questions about the relevance of natural science as a model for the social sciences presuppose ontological confusion over the similarity, or otherwise, of human phenomena to natural phenomena. In moral discourse, the issues are similar. How we identify 'action' for which an individual is or is not responsible depends on the conception of human nature to which we adhere. And depending on our conception of human action, the moral justifications we offer for punishment or blame will vary. In the course of this and the succeeding chapter we shall therefore consider two perspectives on human action, which we shall broadly call 'determinism' and 'indeterminism' or 'libertarianism'.

Further, we shall also consider the extent to which adherence to the determinist thesis is compatible with any use of the concept of responsibility and with the possibility of engaging in any form of moral discourse.

It is not our intention to present a philosophical account of the concept of action or of the morality of different means of dealing with those who perform untoward actions. Rather, our account will be a descriptive one, aimed at dovetailing with our argument that 'available ideologies' provide the origins of the working frames of relevance adopted or employed by those who are in the position of having to make decisions about children who commit offences. By identifying perspectives on the explanation of action and their association with different methods espoused for dealing with untoward action, we merely wish to present what appear to be logically tenable positions. This involves an approach to conceptual analysis not unlike that of contemporary philosophy, but with a different objective. (See Timms and Watson 1976.)

Methodologically, we are committed in this thesis to recognising the relativity of what have been termed 'frames of relevance' (Asquith 1977), a notion similar to 'multiple realities' (Schutz 1970), and 'language regions' (Winch 1958; Oakeshott 1962; Polanyi 1958). The origins of frames of relevance or language regions rest in the available ideologies though they may not be easily identifiable to the observer nor easily articulated by the actor. (Giddens 1976, p.30) Though in theory, language regions may not be reducible one to the other, in everyday language, conceptions of delinquency and its control may well reflect confused associations of ideas and concepts drawn from such origins.

We would argue that the general lack of consensus over delinquency causation and delinquency control is reflected in the frames of relevance employed by lay members of the community such as magistrates and panel members.

It is our task now to identify perspectives on action, responsibility and ultimately punishment that are logically tenable and have the status of available ideologies. In particular, the discussion will focus on the different theses of determinism, indeterminism and the extent to which they can be reconciled. The free-will/determinist debate in moral philosophy and the extent to which morality is compatible with a determinist thesis again finds its sociological analogue in recent attempts to locate a voluntaristic model of man within macro-sociological theory. (See Giddens 1976;

Wrong 1969; and Parsons 1951, 1949, in which he attempts to reconcile functionalism and voluntarism.)

Indeterminism, Determinism and Responsibility

What the libertarian or indeterminist thesis asserts, in brief, is that a necessary condition of moral action is that the agent or actor acted of his own free will in the sense that he could have done otherwise. It is on this that depends both the ascription of responsibility and agency and the very use of the language of moral discourse. Finding its origins in Cartesian indeterminism, the libertarian thesis accepts no limitations on the power of choice available to individuals. 'Agency', in its literal sense, means acting and doing which is very different from events happening or being caused. The libertarian or indeterminist then insists that an individual is responsible and free if he could have chosen to do otherwise than he did do, the model of human action, a distinguishing characteristic from natural phenomena, being purposive and intentional.

In contrast, by determinism, we refer to that general philosophical thesis which states that for everything that happens, and this includes human actions, there are conditions such that, given their existence, nothing else could have happened. All phenomena, human and natural, are the product of preceding causes. Whereas it could be argued that moral discourse is dependent on a libertarian world view and that determinism negates moral discourse, this would be wrong. It would be wrong because philosophical debate has not centred only on the relative merits of libertarianism or determinism but has also considered the extent to which determinism is in fact a thesis that is compatible with the existence of moral discourse as a meaningful and intelligible type of discourse.

Indeterminism and Responsibility

For the libertarian, it is a necessary presupposition of our use of moral language that human beings are capable of choice and can be responsible for what they do since they possess free-will. Nevertheless, though human beings have this capacity to initiate actions, and it is this capacity for action that distinguishes man from other phenomena, human beings are also the subject of events in the world that are beyond their control. As well as being agents in the sense of acting in and on the world, they are also affected by what

'happens' in it. This not only refers to external events, but may also refer to the very constitution of human nature. Kant argued that man is both a rational being who operates in the world and a sensory being in his physical and physiological constitution.

Explanations for action cannot always be, though they may be on occasion, given in causal terms since man is on occasion free to choose how to act and therefore responsible for what he does. Arendt would question (1958, p.157) whether 'action' which could be explained in causal terms could in fact be called 'action' at all. But in Kantian terms, man may be the cause of his own behaviour and is therefore self-determining but a different type of explanation of such behaviour is required.

"Indeed Kant's suggestion that man lives in two worlds, and is subject to two different sorts of causation, is a metaphysical way of bringing out the logical distinction between those two sorts of explanation." (Benn and Peters, 1959, p.203)

Thus, the libertarian thesis has to accommodate means for recognising when people may be held responsible for their actions and when their actions are the result of events beyond their control thereby negating responsibility and agency. This much is embodied in the spirit of Kant's maxim that 'ought' implies 'can'. To assert that a man ought to have done something or ought not to have done something and to hold him morally responsible is to imply that he in fact could have behaved otherwise than he did. Moral discourse does then rest on ontological presuppositions about human behaviour since

"in describing anything as an act there must be essential reference to the agent as the performer or author of that act, nor merely to know whose act it is, but in order even to know that it is an act. (Taylor 1966, p.109)

More than that, it would appear also that we are not simply talking about what it is to be responsible but about what it is to be a person.¹ Libertarianism, adopting a purposive, intentional model of action must allow for those events in the world which are prima facie actions but which on closer investigation are in fact outwith the control of the subject. It is in this dimension of moral discourse that excusing conditions are crucial since it is important for our moral concepts of responsibility and of action to know when we withdraw our assumption that a person is responsible for what he does.

1. This is precisely the point made by Downie and Telfer. 1969.

Several uses of the word 'responsibility' have been noted in the literature. A person may quite simply be called 'responsible' by possessing a particular quality of character. (Gordon 1967; Downie and Telfer 1969) A person may be responsible to someone else in that he is accountable to the other for his actions or his behaviour. (Downie 1971) And in such a hierarchical relationship a person may also be responsible for other people, as a mother for her child.

However, as should be plain by now, the notion of responsibility with which we are primarily concerned is the one which allows us to ascribe blame or praise, reward or punishment to another in respect of certain actions. When we assert that a person is responsible in this sense of the word, we do more than simply describe a sequence of events ultimately traceable to the action of an individual. (See Hart 1960) The essence of moral judgment, as of action, is not discernible by observation alone. It would appear that it was with this in mind that Lucas could argue that -

"If there are persons, we have to view them in part as rational agents and not entirely as regular performing things." (Lucas, 1970, p.171)

It is for this very reason that the method of the natural sciences with its emphasis on observation and experiment is seen as an inadequate model for the social sciences.² Responsibility like action cannot per se be observed and described. Moral judgment and interpretation of action depend on the conventional and mundane standards of social context. Nor are these static since conceptions of responsibility do and have changed in line with development in knowledge of the behavioural sciences. (Clarke 1975) But the developments made both in philosophy and sociology reflect the contention that adequate or sufficient explanation of human action can never be given in causal terms alone. (Peters 1958; Weber 1962) Indeed, a distinguishing feature of human action is that it can be explained in terms of

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2. It is surely in this context that the free-will/determinism debate in moral philosophy and the voluntarism/determinism debate in sociology converge. Just as a problem for moral philosophy is the compatibility of moral responsibility and determinism, in sociological theorising a related issue is the possibility of reconciling determinist theories of society with the concept of agency. The philosophy of action is crucial to both enterprises.

reasons and not only causes. This however has not prevented some philosophers maintaining that reasons may be causes in themselves. (Davidson 1963)

The indeterminist then holds that a person can only be responsible for an action when he could have acted otherwise and further that he could have chosen to have acted otherwise. Moral responsibility in the view expounded by Kant, and more recently by Campbell is incompatible with determinism since choice is itself not the product of antecedents. Campbell (1951) in particular in his criticism of Schlick's attempt to reconcile determinism and moral responsibility, considered that freedom of a contra-causal kind was amongst the conditions necessary for the ascription of responsibility. What defences then would the indeterminist allow that would serve to excuse someone from responsibility? There are two broad categories of excusing conditions - those in which it can be shown that the agent was in some sense compelled to act as he did and those in which he did not really know what he did. Both point to purposeness or intentionality as the condition of responsibility.

The Kantian maxim 'ought implies can' entails that moral judgment logically presupposes that the agent could have, in some absolute sense, done other than he did. The freedom of action underlying Kantian ethics and other versions of libertarianism is categorical rather than hypothetical since it is a freedom to do or not to do an action under similar sets of conditions. But where the will of the agent was influenced in its operation through ignorance or compulsion, then in no sense is it true to say that he could have done otherwise.

Excusing conditions are no less important in the law than they are for morality. They may be more important, indeed as Hart argues excusing conditions

"maximise within a framework of coercive criminal law the efficacy of the individual's informed and considered choice in determining the future and also his power to predict that future." (1968, p.46)

Ignorance

Where there are features of a situation unknown to or mistakenly believed by a person accused of having done something wrong, and these factors are relevant to the ascription of responsibility,

then he may not be held responsible. It is obvious however that though ignorance may on occasion be used as a defence, it is not applied without qualification as the phrase 'ignorance of the law is no excuse' testifies. But what we are concerned with are these states of affairs which we maintain as accepted impediments to purposive or intentional action. Important requisites for moral responsibility are therefore awareness of circumstances, awareness of the wrongfulness and awareness of the possible consequences.

There are of course exceptions in criminal law, especially Anglo-American, where the requirement of mens rea is not absolute. Offences of strict liability, vicarious liability and negligence are examples where ignorance of certain states of affairs is no excuse. This in itself is testimony to the fact that though there are major interstices between the criminal law and morality, the two are not completely co-extensive (Hart 1962; Devlin 1965; McNeilly 1966)

But in moral discourse, it is in some cases an accepted defence to claim ignorance of some features of the situation which if known would have been another set of variables in the choice of action.

Compulsion

Whereas ignorance or lack of knowledge may be sufficient to absolve a person from responsibility in particular situations, compulsion, on the other hand, though it does refer to particular instances of action, may also inhibit the capacity for intentional and voluntary behaviour generally. This does of course depend on what definition of 'compulsion' is accepted and the debate about the compatibility of a determinist thesis with moral discourse rests on subtle distinctions. Compulsion may take a variety of forms and may be either internal or external. (Downie 1971) Examples of external compulsion are where

- (i) the action was the result of an accident;
- (ii) an individual is forced to behave or act in a certain way under duress or threat.

Since one of the objectives in ascribing responsibility for behaviour is to place limits on the causal nexus leading up to the committal of an act, then where a person accidentally commits an act or commits

it under duress, he is not the last link in the chain as it were. His behaviour was not 'purposive', 'intentional', 'voluntarily done' or done through choice.

But it is when we consider the nature of internal compulsion that the very application of the concepts of free will and moral responsibility are challenged particularly by arguments from a determinist perspective. There are three positions which may be identified as logically tenable and which provide the structure for this discussion.

Firstly, as the libertarians or indeterminists believe, people are generally responsible for their actions and may be held to be so in the absence of suitable excuses. Excusing conditions are associated with ignorance and compulsion. Compulsion may be external as we have seen but it may also take the form of 'internal' compulsion. (See Downie 1971) Within this position where such instances of 'determined' action take place, individuals cannot be held morally responsible. Human beings are conceived of as having the capacity to act according to their choices and to will their choices. Where choices are seen as being the result of causal antecedents then they cannot be considered, from this viewpoint, as being freely willed.

The second position held by 'compatibility theorists' is that determinism is not incompatible with morality since, though choices may be determined by desires, motives, background and so on, we are free to act according to our choices. Freedom from compulsion means the absence of constraint and therefore the freedom to act according to our desires. Though more recent writers such as Schlick (1939) have advocated this doctrine, it has a tradition that can be traced back through British empiricists such as Hume, Hobbes and Locke.

The third position in a sense reflects the libertarian in that it believes that determinism and morality are incompatible. Because human action is in fact the result of antecedent causes, then the concepts of free-will and responsibility are utterly irrelevant.

It is to a discussion of the last two positions that we now turn.

Determinism and Responsibility

A number of principles underlie the indeterminist or libertarian thesis. These are that human action is essentially different

from other phenomena in the world; that human action is the result of 'acts of will'; that human beings are responsible, both morally and legally, for some, if not all, of their actions. Human beings then, from an indeterminist viewpoint, are truly 'agents'. But even in these principles an individual may in some circumstances be excused, either through ignorance or compulsion, from responsibility for some or (in special cases, e.g. children, the insane) all of his actions and may not therefore be rightly blamed or punished.

Questions of the ontological status of human action are inextricably linked to questions about the morality of blame or punishment.

(Pitkin 1972) Though the development and advances in the behavioural sciences have furnished us with more information about human action, with implications for the concept of responsibility (Clarke 1975), the logic of excuse remains the same. As Hospers says, in distinguishing the 'layman's' from the 'expert's' acceptance of excusing conditions -

"The number of acts which result from inner compulsion, then far exceeds the uninformed layman's guess; he recognises only the superficial or obvious cases and assumes that in all the other cases no inner compulsion exists. Still, his failure to recognise inner compulsion does not change the formula; if the act arises through compulsion, the agent is morally excusable for it."
(Hospers 1961, p.488)

What the determinist thesis does, in a sense, is to expand the applicability of the causal framework in analysing human action to the point of claiming that all behaviour is in fact the product of antecedent conditions. This ontological shift, with its ramifications for the epistemological basis of social science, implies that the language of moral discourse is in fact invalid and irrelevant to human action. Since on this perspective, there is essentially no difference between human and other phenomena, 'responsibility is an illusion and a linguistic convenience'. (Downie 1971) As we indicated above there is however an important tradition in philosophy traceable through the work of the British empiricists in which determinism is seen as compatible with the constituent elements of moral discourse. This section however refers to what we shall call the incompatible thesis for the sake of brevity.

For those who adopt a purposive and intentional model of human action, there is a necessary distinction between action and other phenomena such as bodily movement. Melden (1961, Chp. XIV) is unable,

for example, to bridge what he considers to be 'the irreducible gap between bodily movements and actions'. Peters is also sceptical of the implications of a deterministic analysis of action since -

"to claim we are confronted with an action is ipso facto to rule out such mechanical explanations as being sufficient." (1958, p.8)

And Melden again, in agreement with Peters, suggests that a causal explanation depicts how an event is brought to pass whereas an explanation by purpose tells us what the person was doing. (1961, Chp.XIV) What then are the basic premises of determinism which make us question the status of concepts such as 'action', 'person' and 'responsibility', concepts that are employed in and crucial to the language of moral discourse.

The general philosophical thesis of determinism maintains that for everything that ever happens, there are conditions such that given them, it would be impossible for anything else to have happened. The modern theses of determinism have their origins (Ruska 1974) in the developments made in the natural sciences in the 17th and 18th Centuries, particularly with the shift to observation, experiment and the search for descriptive laws. The ontological and epistemological implications of this empiricist conception of scientific endeavour is not without significance for contemporary debate on the inadequacy of positivism as a model for the social sciences. (Ryan 1970; Philipson 1971; Schutz 1970) But the real significance of the trend was that explanations of events in the world were grounded in scientific and rational accounts in opposition to the metaphysical and theological tenets of earlier philosophies. (Ruska 1974) Only the facts empirically verified by methods akin to those employed in the natural sciences could attain the status of knowledge. Such thinking underlies verificationist and referential theories of truth. (Blum and McHugh 1971)

The importance of observation and experiment as method is that metaphysical speculation was replaced by empirical investigation. Human action, and mental processes such as thinking, as categories of events in the world were considered susceptible to the same explanatory framework.

In terms of relevance for moral discourse, 'determinism may without logical fault be the thesis that physical events and states cause such things as decisions and actions'. (Honderich 1969, p.115) The irreducible gap conceived by Melden can theoretically be bridged, and this is no less significant for moral discourse than for our conceptions of human action. If action is caused, what are we to make of the concept of freedom? Can the freedom available to individuals ever be categorical in Kant's use of the term? If we are not free, then how can we be held responsible for actions that in fact we could not help doing. Moreover, the concept of responsibility is problematic not only in that it is difficult to establish when people are responsible for their actions but also because the language of determinism is prima facie incompatible with the language of morals. (Wootton 1959) If actions are made to happen, then the purposive and intentional types of explanation are without application. The logic of excuse is without application since all events and actions are the outcome of events which could not be otherwise. (Downie 1971)

But what libertarian theories have in common is that they all assert the relevance of the distinction between human action and other phenomena. For each of them a sequence of events or action can be traced back to an agent with free choice, thereby breaking the link in the causal nexus. They each posit what Broad (1952) refers to as a progenitor.

"If determinism be true, every event has causal ancestors, and therefore there are no causal progenitors." (p.98)

There can in effect be no agency, only events in the world causally linked. Concepts such as 'will' and 'self' are mere heuristic devices employed to account for events in the world that can be explained in terms of causal antecedents. (Ryle 1968; Wann 1964; Skinner 1973; Eysenck 1965) Since 'wills' and 'selves' are not observable, they are not readily accommodated within empiricist conceptions of science. (Willer and Willer 1973)

The idea that all events are the consequence of causal antecedents means that what we have referred to as the incompatibility thesis allows for neither 'progenitors' nor 'self-determinism' since human choices, decisions and actions are themselves caused. All are necessary consequences of some antecedent circumstances. Human actions as a subcategory of natural events are necessary effects of such

antecedent states of affairs. The implication for morality is then that if we are not free to act other than we did, if we could not act other than we did, we are therefore not free to act in such a way as to be responsible agents.

It should however be pointed out that not all philosophers readily accept that actions or events in the world are necessary consequences of antecedent circumstances. As Hume argues, events are not necessarily the result of particular causes but are merely associated by contingency or what he refers to as 'constant conjunction'. Whether or not we accept the Humean distinction between 'necessity' and 'constant conjunction' there are two important implications arising from the claim that events in the world are caused by antecedent states of affairs. Given similar states of affairs similar events ought to occur. The determinist can therefore argue that his thesis implies that events are predictable and that accordingly events are particular instances of the effect of universal invariable laws governing the universe. (Willer and Willer 1973; Ryan 1970; Glover 1970)

Human action then, in terms of the incompatibility thesis, is not only predictable but also subject to the causal laws that govern all phenomena in the universe. (Ryan 1970; Hospers 1950) If an event is conceived of as the necessary effect of antecedent conditions then given sufficient knowledge of the states of affairs we ought to be able to predict particular instances. Moreover, if universal and invariable laws govern the universe, they can provide us with ready-made sources for explanation. Particular instances of events whether they be human action or other phenomena are manifestations of general laws and may be explained in terms of the theoretical elements embodied by such laws. Human action does display regularity but it is a matter of debate whether the conception of science appropriate to natural phenomena is apposite to human behaviour. The danger is that explanations of human action and, more importantly of social life, given in such empiricist terms are reductionist. (Taylor, Walton and Young 1973, Chp.2)

This ontological commitment to the existence of typical patterns of causal sequences both in natural and human phenomena - there is no real distinction - requires a

causal account of human behaviour, action and motivation. Thus far, we have been speaking about the logic of determinism but what different theoretical accounts of human action have to be able to do is to fill in the details of the sequences between cause and effect. (Ryan 1970)

Formally, determinist accounts of action rely on concepts such as cause, predictability and the existence of invariable laws and are committed to an empiricist epistemology. Materially, however, there exists considerable divergence over what are the mechanisms through which causal sequences operate. Later we shall in fact discuss different theoretical accounts of delinquency which assume delinquency in some form, but which postulate different mechanisms. This

"brings out a certain flexibility in the determinist position as outlined here. The determinist is not committed to the view that the causal laws governing human behaviour must be psychological, must be physiological, must be chemical or must be physical. All he claims is that there is some set of causal laws, at whatever level or levels of explanation, that entail tight-fitting predictions of human behaviour, and that there is no human behaviour that is in principle unpredictable on the basis of a knowledge of these laws and of the initial conditions in which they operate." (Glover 1970, p.45)

Whether we accept Hobbesian physical determinism or the principles of the early biological positivists (see Taylor, Walton and Young 1973, Chp.3) the logic of determinism, as Glover's quotation shows, is essentially the same. The quotation also provides us with a neat summary of what we have called the incompatibility thesis, i.e. the incompatibility of determinism with the central concepts of moral discourse. If a correct prediction of how a person would act was entailed by a set of true causal laws, together with statements of the initial conditions relevant, he could not have acted otherwise. Incapacity, to borrow Kant's phrase, would be categorical. The incompatibility thesis rules out the ontological distinction between action and other phenomena and assumes basically similar epistemological principles. But more importantly for our present purposes, it also rules out the possibility of anyone ever being responsible in the sense of the term which libertarians use. Whether there can be a revised deterministic usage of 'responsibility' we shall in due course consider.

Determinism and Responsibility: Compatibility Thesis

For the libertarian, to have what was referred to as free-will entails having a will that is categorically free and exempt from the causal laws that the determinists posit as governing human action. To be morally responsible requires that individuals qua agents can act according to choice and can choose as they will. Moral responsibility, in terms of the libertarian conception, is therefore incompatible with compulsion, if by compulsion we mean 'subject to the influence of causal laws'. It is precisely in rejecting this notion of compulsion that Schlick (1939) is able to argue that human action can be free and at the same time the product of antecedent circumstances. He therefore claims that he has resolved the apparent antimony between free-will and determinism claiming that it was

"really one of the greatest scandals of philosophy that again and again so much paper and printers ink is devoted to this matter". (1939, p.143)

Schlick was concerned to provide an account of responsibility that would allow people to be held responsible for their actions without committing us to the view that the determinist thesis is false. Some philosophers have also argued that it is impossible anyway to claim that, as the indeterminists do, choices and actions are not determined but are freely, and categorically so, willed. The indeterminist thesis is in this respect unsound since it would make it theoretically impossible to link the making of choices or the doing of actions with antecedents such as background, nature, desire and so on. Hobbes and Hume in particular both maintained that a satisfactory account could not be given of decisions unless they were seen as necessary consequences of such antecedents as desire or disposition. To view decisions as freely made while totally rejecting the deterministic thesis is illogical. What we cannot here attempt is to present an argument to the effect that there is no incompatibility between free-will and causation. Rather our purpose is to present some of the basic principles underlying the acceptance of the compatibility thesis, particularly by the empiricist philosophers.

The solution that Schlick proposes has its origins in a tradition that can be traced back through British empiricist philosophy particularly in the philosophy of Locke, Hobbes and Hume.

More recently, as well as by Schlick, this version of what James (1902) refers to as 'soft' determinism as opposed to the 'hard' determinism of the incompatibility theorists, has found expression in the philosophy of Moore (1949), Russell (1912) and Ayer (1954; 1953). It was also later developed sociologically by Matza (1964) in his critique of positivism.

Following the formula proposed by Schlick the prima facie antinomy between moral responsibility and determinism can be resolved thus. Whereas decisions may be caused, we can and often do act freely. As we shall see the conception of responsibility maintained by the compatibility theorists, and by implication its significance for questions about the morality of blame or punishment, is in a number of respects different from the libertarian conception.

The solution to the problem rests on clarification of what we mean when we refer to human action as 'free'. 'Freedom' for those who adhere to the compatibility theory is taken to mean the lack of constraint and the lack of compulsion. It is further claimed that there is no incompatibility between conceiving of decisions as the necessary consequences of preceding causes and believing that we are not constrained or compelled to decide as we do. But compulsion, on this perspective, does not mean the same as causation, since it is misleading to assume that causes compel. (Downie 1971) Purposive language, and the purposive-intentional model of human action can be reduced to causal language since the freedom required is not, as Campbell maintained, of a contra-causal kind. (Campbell 1951)

Hobbes conceived of the lack of constraint or freedom as the absence of physical force thereby allowing a man to do as he pleased. (Hobbes, Vol.4) Similarly, Schlick suggests that

"Freedom means the opposite of compulsion; a man is free if he does not act under compulsion, and he is compelled or unfree when he is hindered from without in the realisation of his desires." (1939, p.150)

To say a man decided freely, means that he decided as he wanted, unhindered by external forces. But Schlick, developing Hobbes' position, accepts that there are also internal forces which may possibly impede freedom of decision thereby absolving an individual from responsibility. As examples, he cites action performed under

the influence of drugs, and mental illness in which case not the individual 'but his disease is responsible'. (Schlick 1939, p.151)

People who act in accordance with their desires and are not hindered in their decision by forces referred to above therefore act freely. In this way, the strength of the claim that responsibility demands acceptance of the determinist position rather than its rejection can best be appreciated. Ross, for example, considered choice to be the expression of the strongest desire at the moment of action, and desire, in turn, is the joint product of antecedent states of character and beliefs about the circumstances. (1939, pp.222-51) Questions about the capacity to act in a morally responsible manner are negative in the sense that they refer to the absence of factors whose presence would otherwise negate responsibility and freedom of choice. Hart makes the same point -

"Yet, none the less, what is meant by the mental element in criminal liability (*mens rea*) is only to be understood by considering certain defences or exceptions most of which have come to be admitted in most crimes, and in some cases exclude liability altogether, and in others merely reduce it." (1960, p.152)

Hart is not here giving a full-blown argument in support of the compatibility thesis. But elsewhere, in what appears to be the only formal statement of his position with regard to this, he suggests that his concern with the defeasibility of concepts such as responsibility is not incompatible with the determinist thesis. He satisfied himself with the claim that

"the defence I make in this paper of the rationality, morality and justice of qualifying criminal responsibility by excusing conditions will be compatible with any form of determinism which satisfied (certain requirements. (1968, p.28)

That is, for Hart at least, the concept of responsibility is defeasible in that responsibility can be established not so much by indication of the presence of a necessary mental or subjective element but the absence of the generally or formally accepted excusing conditions. Determinism is compatible with such a standpoint.

When we claim that someone acted voluntarily, in ordinary moral discourse we usually mean that he could have acted otherwise. The importance of the purposive-intentional model of human action adopted

by the libertarians was that it allowed for the possibility of alternative behaviour. But we also saw in the incompatibility theory that the truth of determinism entailed that no one could ever act other than he did, and could not therefore be morally responsible in the libertarian sense. (See Glover 1970) The freedom required for truly voluntary and therefore responsible behaviour was considered categorical. However, the position adopted by the compatibility theorists is that freedom of action implies freedom to act in accordance with choice. 'I could have acted otherwise' is not categorical for the compatibility theorists, but means rather something like 'I could have acted otherwise, if I had chosen'. (Moore 1912) This is the only sense in which it would be true to say that a man could have done other than he actually did do. Moore (1912) suggests that even the determinist can and must say that an individual can very often have done things he did not do - if he had chosen to do so. Because 'cans' are constitutionally 'iffy' (Austin 1956), the conditional clause provides us with the material criteria for determining when a man could have acted otherwise and may therefore be held responsible.

In ascribing responsibility, the compatibility theorists are not so much concerned with identifying remote causes - for example when a man has inherited his behaviour from his great-grandfather (see Schlick 1939). Rather they are only really concerned with the question of who can effectively be rewarded or punished. Punishment for Schlick is an educative measure. Such a line of thinking is apparent in the psychological hedonism of utilitarians such as Mill, who argued that the human will was governed by motives and that the threat of punishment provided an additional motive for refraining from criminal behaviour.

A man is only morally responsible if those motives which brought about the act can be affected 'in respect of his future behaviour by the educative influences of reward and pain'. The conception of human nature is one in which man is seen as conducting his life in terms of a hedonistic and moral calculus.

The incompatibilist position espoused by the determinists could not accommodate the logic of excuse within its explanatory framework. The libertarian position posited excusing conditions, or at least their absence as a prerequisite for the ascription of

responsibility. The compatibility theorists, in reconciling determinism with moral discourse, accept the necessity of excusing conditions but for very different reasons from those of the libertarians. There are those categories of individuals for whom the prospect of reward or pain would be completely ineffective; these are children and the mentally and physically ill. Similarly, to hold as responsible those who acted in ignorance or through compulsion (in the compatibilist sense of the term) would be unjust for the same reasons. It is however by no means easy to separate the question of efficiency and justice since

"Questions of reconciliation of determinism and moral responsibility have stressed that determinism does not make all blame ineffective, but have largely ignored the question of whether or not determinism makes all blame unjust." (Ayer 1954)

Further doubts about the compatibilist position have been raised by Campbell and other libertarians. Though some actions may be caused, they argue, the way in which we decide when to hold people responsible assumes that actions are free. This is the basis of moral discourse and moral judgment. Strawson (1962) attempts to meet such objections in that his support for the compatibilist thesis rests on the reconciliation of ordinary moral language with determinism. In that respect, his conclusions suggest not that determinism and moral discourse are necessarily compatible but rather that they are not incompatible.

His first attempt to make a case out for the compatibility thesis is concerned with reconciling physical determinism and morality. (Strawson 1962) The conclusion he states is that human action cannot be explained fully in terms of physical events. But anyway, since physical determinism is concerned with physical events, our ordinary concepts of action and responsibility are in no way threatened. Causal and purposive action are not incompatible because causal explanation is not 'really of action but of moving parts'. His second argument (1962) logically related to the first rests on the distinction between reactive and objective attitudes. Reactive attitudes are what characterise interpersonal behaviour between normal individuals and involve moral judgment and the ascription of blame. If determinism, in the incompatibilist view, were true then our reactive attitudes would logically be out of place. Our objective

attitudes are those which are devoid of judgmental properties and involve the suspension of reactive attitudes, being more 'disinterested'. Occasions when we would suspend our reactive attitudes and adopt the objective mode would be when we felt that someone had acted through compulsion or ignorance. (Downie 1971) It could be argued that the development of social policy and the expansion of welfare measures for those formerly subject to penal control reflects the increasing commitment to an objective stance. (Downie 1971) What Strawson is suggesting, however, is that in ordinary social intercourse the reactive attitude is deeply ingrained and not at odds with determinism. Reactive attitudes are essentially different from objective attitudes and in this way what Strawson is saying looks very like Mead's contention that

"it is psychologically impossible to hate the sin but love the sinner". (Mead 1918, in Coser & Rosenberg, 1969, p.583)

It is in considering what to do about those who behave in an untoward manner that the distinctions that characterise the three positions identified in this section are further drawn. It is also particularly in relation to delinquency control that the decision as to the appropriate forms of measures is by no means easy.

Punishment and Justification

As we have seen, the discussion of moral responsibility and action has usually been in the context of the free-will/determinist debate. The significance of this for the present thesis is that the historical and theoretical development of criminology, underpinning many of the modifications in the legal and penal system, reflects the move away from a perspective on crime based on an assumption of rationality and free-will (classicism) to one based on a deterministic framework. In no case more so that that of children has the criminal law been more subject to continued modification (Bean 1976) paralleled by an increasing emphasis on children as appropriate objects of inquiry for positivist social science. As Gillis points out (1974), though 'delinquency' and 'adolescence' were only 'discovered' or 'invented' comparatively recently, moves which were to culminate in the reconceptualisation of delinquency as a behavioural problem had their origins in the 'scientisation' of youth criminality.

In the previous section, we examined three different perspectives on action, namely indeterminism, determinism and the compatibility thesis, and what we must now do is to examine the arguments for or against punishment founded on these. Once again, the purpose is not so much to examine philosophically the internal logic of such justifications but to identify the major perspectives which provide 'available ideologies'. This is in keeping with my argument that ontology, epistemology and morality are inextricably linked. In rather simpler terms, the identification of action as punishable or blameworthy and the justification of dealing with untoward actions depends to a great extent on the conception of human action employed. How we conceive of some action, of some cases of delinquency for example, sets the terms for decisions we make about appropriate responses to it. The changing attitudes to children are in part attributable to the evolution of a conception of children as being inappropriate subjects for punishment. The attempts by people such as Blackstone and Coke (see Kean 1937) to establish criteria for the age of discretion were paralleled in practice by the difficulty of actually proving discretion where such considerations as the height of the child were employed! (Kean 1937)

Prior to examining, ideal typically, major views on the justification of punishment, some consideration ought to be given to what is meant by punishment itself. There are a number of reasons for this. To theorise about the justifications of punishment is not thereby to define what it is that we are attempting to justify since justification and definition are two entirely independent processes. (Flew 1954; Quinton 1954; Baier 1955; Armstrong 1961) Definition is essentially a linguistic matter whereas the attempt to offer justification for a practice or behaviour is essentially a moral issue, offering moral arguments why some states of affairs ought or ought not to obtain. As we shall see, some attempts to justify punishment may involve 'a confusion of modalities' in that they have not always sought to justify the same state of affairs. Similarly, one of the questions prompted by a system of juvenile justice based on a conceptual framework of need is whether treatment is not after all a form of punishment. A related issue is that whether treatment theoretically is or is not punishment, does not preclude the possibility that it is experienced as such by those subjected to it. The prima facie dichotomy

between punishment and treatment is not so clear cut as to allow the simple assumption that 'punishment' and 'treatment' are mutually exclusive concepts.

A number of philosophers (Benn 1973; Watson 1976) have followed Flew (1954) in suggesting that certain conditions have to be satisfied by a standard case before the word 'punishment' may appropriately be applied. The conditions laid down by Flew include what are generally accepted as essential characteristics of punishment.

Flew proposes that: punishment must be an intended unpleasantness to the subject; punishment must be for an offence; punishment must be of an offender; punishment must, in a standard case, be imposed by virtue of some 'special authority'.

Though these conditions identify what is ~~necessary~~ for a practice to be called punishment, they do not apply only to legal and/or moral offences, as indeed Flew himself asserts; they can also apply to the use of the word in connection with any system of rules. Nor do they in themselves specify in what circumstances punishment is justified, how severe punishment ought to be, or even what form punishment should take. The existence of excusing conditions and categories of offences such as those of strict and vicarious liability do not allow for straightforward application. It is when we begin to ask questions about the justification of punishment that defining characteristics have to be supplemented by arguments that are essentially moral in nature.

Rawls (1955) draws an important distinction between the justification of a rule and a practice on the one hand, and the justification of a particular action on the other. This applies directly to justifications of punishment where a distinction can be drawn between

- (a) justifying punishment as an institution; and
- (b) justifying the application of punishment in particular cases. (See also Benn 1973)

Both concern the moral justification of punishment but (a) refers to the morality of the institution or the practice as a whole, whereas (b) refers to the moral appropriateness of a particular instance of the application of punishment within the practice. It could also be argued that (b) could refer to the form that punishment ought or ought not to take. It was suggested above that the defining

characteristics of punishment as a concept give no indication of the form that punishment should take as a practice. Similarly, whereas punishment in concept may be morally justifiable, there may be particular forms of punishment, such as garotting, flogging, birching, which pose deep moral dilemmas. Whereas the development of a welfare ethic has eroded the extent of application of punishment, particular forms of punishment have also been recognised as morally unjustifiable. Rawls' distinction between the justification of a practice and the justification of particular actions falling within it has been extended by Hart who argues (1968) that it is mistaken to attempt to evolve a comprehensive theory of punishment which would bestow moral validity on the institution of punishment as a whole. Though there may be a General Justifying Aim there must also be some means for distributing punishment in a morally acceptable way. Questions about the justification of punishment as a practice cannot and ought not to be confused with questions about who ought to be punished, how severely and so on.

Questions of justification then arise at two important levels (though as Hart says they are not necessarily mutually exclusive). These are in reference to the very idea of punishment and the moral validity of particular acts of punishment. Such concerns are paralleled by the two main traditions in the justification of punishment since retributivism mainly answers questions about the justification of punishment in particular instances; utilitarianism on the other hand considers mainly questions pertinent to the morality of punishment as an institution. Since we are arguing in this thesis that the main justifications of punishment (as are the main scientific theories about delinquency) provide 'available ideologies' from which ordinary commonsense approaches to delinquency control are derived, it is important that at least the main salient features of retributivism and utilitarianism respectively be identified. As our concern is not philosophical, there is no scope in this thesis to attempt to resolve the philosophical antinomy between retributivism and utilitarianism, merely to catalogue essential features.

The history of the juvenile court has been one in which retributive justifications for punishment of children have been gradually eroded and replaced with more utilitarian concerns, though juvenile justice philosophy was, and is, still riddled with conflation of the two perspectives. And -

"in any case it should at least be clear that part of the juvenile court system dealing with offenders was an amalgam of features reflecting and justified by two distinct moral points of view." (Watson 1976, p.198)

Following the three perspectives identified earlier, I now intend to consider the justifications for punishment in reference to

- (i) indeterminism and punishment
- (ii) the compatibility thesis and punishment
- (iii) determinism and punishment

In broad terms, my discussion of (i) will relate mainly to retributivist accounts of punishment and its justification, whereas (ii) and (iii) will be more concerned with (broadly speaking) arguments derived from utilitarianism (again broadly defined). This is not to be taken however as signifying a belief in the mutual exclusiveness of retributivism and utilitarianism respectively, but rather is an attempt to identify the salient characteristics of differing perspectives.

(i) Indeterminism and punishment

A problem with punishment is that prima facie, those behaviours or actions which we call punishment are in many respects similar to the rule breaking behaviour, whether it be in a legal or other context, which provoked its infliction. As punishment involves the deliberate, intentional infliction of some form of unpleasantness, the legitimacy of such a practice is prima facie doubtful and calls for moral arguments.

In moral philosophy, there is disagreement between those who consider that the moral worth of an action is determined by reference to the motive of the agent and those who consider that the moral worth of an action is determined by reference to the consequences of that action. Retributive theories of punishment offer as justification a past act, the offence, which is considered a wrong requiring punishment. Perhaps the essential differences between retributivism and utilitarianism are most concisely summed up by Kant:

"Punishment can never be administered merely as a means for promoting another good, either with regard to the Criminal himself or to Civil society, but must in all cases be imposed only because the individual has committed a crime" (Hastie 1887)

and later

"For one man ought never to be dealt with merely as a means subservient to the purpose of another"
(Hastie 1887)

The obligation or imperative to punish is categorical in as much as it would be morally wrong to allow an offence to go unpunished. In this respect, the retributive justification of punishment has been seen as self-validating (Quinton 1954) requiring no further moral validation outwith itself. To follow Kant in asserting that punishment of offenders for offences is good in itself is to reject the need for further justification. Other retributivists however have seen punishment as restoring an imbalance in social order. Hegel for example asserts that -

"Punishment is necessary to annul the wrong done by the criminal not restitution or compensation but the criminal has upset the balance of the moral order which can be restored only by his being made to suffer. Or in terms of the dialectic, crime is a negation of right and as such a nullity; punishment negates the negation thus reaffirming the right." (1942, p.69)

But to assert that a man be punished because he has committed an offence is to assume a relationship between offence and sanction. It is in this respect that retributive justifications of punishment rest on the indeterminist thesis and consequently seek to promote non-treatment punishment. For the retributivist, a man is punished because he deserves punishment, or he may even be said to have a right to be punished.

The justification for punishment then rests on what the offender has done and not in any consequences that may accrue from punishing him. To seek justification in the consequences of his punishment is on this view to use individuals as mere means to ends and not in Kantian terms as ends in themselves. Furthermore, to assert that only those who have committed an offence can justly be punished is supplemented in retributivism by the contention that only those who are 'responsible' for their offences can be punished. (Watson 1976; Honderich 1969) The offender is punished justly if, and only if, he behaved culpably. The indeterminist thesis therefore supports a conception of man as having the capacity for rationality, choice and intention, that is free-will; it also supports a justification for punishment in which punishment is deserved and just where the offender

behaved culpably or responsibly. Punishment is not and ought not to be associated with any attempt to promote other ends such as the reformation or rehabilitation of the offender.

However, the indeterminist thesis also accommodates excusing conditions which serve to absolve individuals from responsibility and the possibility of punishment. Similarly, it is recognised that there are categories of offenders who are not and cannot be morally responsible, such as children or the mentally ill and who cannot therefore be justly punished. Because of their incapacity to form choice or intent such persons are not responsible. Rather than be the subjects of non-treatment punishment they ought to be offered non-punishment treatment. But these are residual categories, and though conceptions of responsibility have been increasingly subjected to modification as the result of advances in the behavioural sciences, resulting in the expansion of such categories (Clarke 1975) the indeterminist thesis is central to retributivist justifications of punishment.

A number of consequences follow from the postulated relationship between culpability, desert and punishment. Since there are varying degrees of culpability, punishment deserved by the offender must be proportional to his wrongdoing or 'the depravity of the act'. (Rawls 1955) Or as Honderich (1969) claims, 'the penalty will give satisfactions equivalent to the grievance caused by his actions'. A corollary of this for retributive philosophy is that like offences ought to be treated in a like manner so that the principle of proportionality is supplemented by the principle of consistency. That is, not only must a punishment be proportional to the culpability of the offender or to the nature of his act, but in like cases the same punishments will be inflicted. The similarity between retributivist arguments and the formal requirements of justice such as 'treat like cases alike' which underpins considerations of due process and natural justice is apparent. (See McCloskey 1965) But as with justice, the formal criteria have to be supplemented by material or substantive criteria (Lloyd 1964; Perelman 1963) by which the logic of likeness can be given context. For the retributivist, 'likeness' is determined in terms of desert or merit. What is commonly referred to as the tariff system (see Thomas 1970) embodies the principles of proportionality and consistency in the form of a penal calculus. Thus, a prime element in the retributivist position is that the

severity of the sanction should in some way be related to the culpability of the offender and the amount of harm done by the offence. Some retributivists however would say that 'the amount of blame and therefore the severity of the penalty should be governed by the offender's intentions and not by the actual result'. (Walker 1969) What this does is to introduce the particularly difficult task of establishing the state of mind of the offender at the time of the offence. This is conveyed in the legal maxim 'actus non facit reum nisi mens sit rea'.

It is because of concern with the subjective element of mens rea that a criminal trial

"may involve investigations into the sanity of the accused; into what he knew, believed or foresaw These matters come up under heads known to lawyers as Mistake, Accident, Provocation, Duress, Insanity (Hart 1968, p.31)

but

" for children and persons of unsound mind, the question of technical conviction for crime has lost much of its importance because they can frequently be treated in much the same way whether they are found guilty or not." (Hart 1968, p.184)

Though Watson (1976) argues that the development of juvenile justice reflects the attempt to reconcile two moral points of view, it is undoubtedly true that the history of the punishment of children has been one in which the retributivist position has increasingly been eroded by more utilitarian concerns.

Whereas for the retributivist a person is punished because he had done something to deserve punishment, a distinction has to be drawn between 'desert' as justification and 'desert' in Hart's terms, as a limiting factor. Thus punishment ought not to be decided upon simply with atonement in mind since a limit, a retributively appropriate limit, should be imposed on the severity of the sanction. In terms of 'retribution in distribution' the importance of the moral culpability of the offender is further signified by Walker (1969, p.31) in the principle that 'society has no right to apply an unpleasant measure to someone against his will unless he has intentionally done something prohibited'. Those who behaved responsibly can justly be punished and the justice of the sanction

can be further enhanced by its correspondence with the desert of the offender. It is because retributivism emphasises the questions of who can justly be punished and what form punishment can take that retributivism has been seen as being not a moral but a logical doctrine. (Mundle 1954) But in general where retributivists in the main agree is that punishment must in some senses fit the crime, that the punishment must be deserved and that offenders in fact have a right to punishment by virtue of their moral agency. (Quinton 1954; MacCormick 1974) Penal sanctions moreover take the form of non-treatment punishment except in the case of certain categories whose capacity for moral responsibility is in doubt. Whereas the indeterminist thesis supports retributivists' justifications of punishment, both the determinist and compatibility thesis espouse different approaches to responsibility and therefore also different perspectives on how to deal with offenders.

(ii) Compatibility Thesis and Punishment

In terms of retributivist justifications of punishment, only those who are morally responsible can justifiably be punished for criminal behaviour. The conception of the offender as deserving his punishment and as having a right to punishment (MacCormick 1974) ultimately derived from the libertarian thesis that to have free-will entailed having a will that is categorically free. Retributivism is by these criteria essentially backward-looking in that it focuses on the offence and the offender's capacity at the time of the offence for rational action.

But as we have seen, there are those who argue that the truth of determinism does not ipso facto preclude the possibility that individuals may still be held responsible for their actions. The justifications for punishment then which derive from this philosophy are radically different from the retributivist position though, again, this is not to imply that they are mutually exclusive either theoretically or practically. What may be broadly termed utilitarian justifications of punishment differ from the retributivist ones by being mainly goal or end-oriented. That is, in opposition to the backward-looking character of retributivism, utilitarianism promotes a justificatory framework for punishment which is essentially forward-looking. The types of justification offered are mainly those

of deterrence or reformation. And as we shall see, the utilitarian argument for bringing about some change in the offender through punishment was also developed into an argument that offenders could not be justifiably punished but were in need of help or treatment.

Utilitarian justifications of punishment can therefore be said to be forward-looking in that punishment can only be justified in terms of its beneficent consequences. The justification for punishment therefore rests in the value of its consequences, and the only valid reason for punishing is to prevent crime, not to seek to avenge it. As did the retributivists, the utilitarians noted that punishment, prima facie, is a wrong in itself, and merely represents the imposition of a new wrong for an old, a principle epitomised in Bentham's assertion that -

"all punishment is a mischief If it at all ought to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil." (Benn 1973, p.22)

What the retributivists show concern with, following Kantian orthodoxy, is that utilitarian philosophy could be construed so as to allow the punishment of the innocent since this could be justified in terms of any beneficent consequences that may be seen to accrue. Thus since punishment ought to be inflicted because the offender deserves it, utilitarian philosophy permits 'crying injustice'. (Benn 1973) In terms of utilitarianism, the purpose of punishment is not to annul a wrong nor to restore a right, nor is it to be determined by the 'malignity of the wrongdoer'. (Beccaria 1963) Rather it is the prevention of crime. Whereas the retributivist approach, founded in indeterminism, supported non-treatment punishment, the utilitarian perspective promotes treatment-punishment since punishment is end-oriented and forward rather than backward-looking. And though prevention may be the overall objective, the attainment of such an end can be achieved in a number of ways. Bentham (1948) argued that there were three major means of preventing crime; incapacitation, deterrence and reformation.

Earlier we saw that, according to Schlick and others, a man can be held responsible if his motives can be influenced favourably by reward or punishment. Schlick further argued that the question of a man's responsibility is the question of whether punishing him will have good effects. With reference to deterrence theory in particular,



there does not appear to be the same controversy about free-will and responsibility as with retributivist justifications. (Honderich 1969 pp.127-131) Far from its being the case that deterrence is incompatible with causal accounts of human action, a number of philosophies have associated deterrence with some form of determinism. Since punishment in utilitarian terms is wholly a matter of preventing crime and attaining certain stated ends, it is quite reconcilable with the compatibility thesis on human action. Mill, for example, (1962) argued that the human will was governed by motives and that the threat of punishment provided an additional motive for abstention from criminal behaviour. Both actual offenders and potential offenders could then be deterred by the prospect of certain punishment. A conception of human nature as operating in terms of some moral or hedonistic calculus whereby individuals could rationally anticipate the outcomes and consequences of behaviour, whether untoward or otherwise, fits in well with utilitarian justifications of punishment. Classical criminology with its conception of rational man was committed, notably by Beccaria (1963) to the belief that it was not severity of punishment but the prospect of certain punishment that would be more effective in reducing the escalating crime rates of the time. More recently, the relationship between punishment and responsibility, echoing the arguments of advocates of the compatibility thesis has been stated thus -

" a man is not punishable because he is guilty; he is guilty because he is punishable." (Nowell-Smith 1954, p.51)

It is by such an argument that utilitarianism has been defended against the commonplace retributivist claim that it allows for the punishment of the innocent, theoretically justifiable because of the beneficent consequences that may accrue. The possible consequences, claim the retributivists, could be used to nullify any injustices perpetrated in particular instances. But utilitarian justifications do impose limits on the scope and the extent of punishment in accordance with a principle of economy of threats. (See also Sprigge 1965) Honderich, with specific reference to deterrence theory, characterises economy thus. Punishment

" does indeed deter and in so doing (1) causes less distress than would occur if it were not imposed. Also (2) there is no other punishment that would deter as effectively at a cost of less distress." (Honderich 1969, p.49)

Punishment, if it does not and cannot serve to deter an offender cannot be justified, and it is in this respect that, for utilitarians, the question of how severely to punish is determined by the same criterion as the question of whether to punish at all. (Moberley 1968) And since it is not the severity of but the certainty of punishment that has a deterrent effect, only as much punishment is necessary or justified as will be sufficient to deter either actual or potential offenders. (Beccaria 1963.) Severity as a preventive of crime by itself may actually defeat its own ends, an argument which applies as much to punishment as an institution, as it does for specific acts of punishment.

It was with such considerations in mind that Beccaria argued that punishment should have the greatest impression on others with the least torment to the criminal. (Beccaria 1963) The effect of these principles as was intended by their authors of the classical school of criminology was to lessen the severity of the law at the turn of the 18th Century. But the point for the purpose at hand is that punishment should not be greater than what is needed to deter.

But there are also categories of offenders who cannot justly be the subject of punishment at all and who are not guilty because they 'are not punishable'. This is because in these instances, punishment can only be ineffective. Children, the mentally ill and the physically ill cannot be punished on utilitarian principles since they and their like are generally not susceptible to deterrence by threat. However, where children are considered punishable, such as those about the age of criminal responsibility, it could be argued that in certain cases, punishment is appropriate, though this may be as much for reasons of reformation as of deterrence. Likewise, the significance of excusing conditions is that, in this perspective, it would be meaningless and ineffective to punish anyone who acted under duress, mistake or who could claim any of the generally acceptable means of defence. The threat of penalties or sanctions could not deter anyone who found himself in such circumstances. (Benn 1973) But in general such arguments serve to differentiate between those who could and those who could not be justly punished, not so much in terms of responsibility, though this is one factor, (Watson 1965) as in terms of the susceptibility of threats of punishment.

An important feature in utilitarian justifications of punishment and especially of deterrence theory is that, a fact that seems rather obvious, punishment must serve as a warning and must therefore be as public as possible. (See Moberley 1968) It would appear to follow logically that if a justification of punishment entails consideration of beneficent consequences such as deterring potential offenders, then punishment ought to be publicly displayed to have the maximum effect. The public denunciation of offences and offenders has been advocated by a number of authors (Beccaria 1963; Fitzjames Stephen 1883) and has undoubtedly influenced the development of most western systems of criminal law. In sociological terms, Mead (1918) had discussed the potential for cohesion in the social order as a result of the punishment of offenders. And the potential for conflict between punitive and other utilitarian considerations is neatly summed up in Mead's by now apocryphal maxim that it is psychologically impossible to hate the sin but love the sinner. As we shall later see, the development of therapeutic or treatment philosophies for dealing with offenders has been paralleled by increasing attempts to deprive social control of its symbolic dimension. This is nowhere more so than in the case of children, and provides an appropriate area of contrast between systems of juvenile justice that are court based and more recent developments in favour of administrative tribunals.

Moreover, it need not necessarily be the case that deterrence theory is irreconcilable with other utilitarian justifications such as reformation, especially where the reformatory influence can be said to apply to those other than the offender as well as the offender himself. Punishment may in fact reform through deterrence though this argument is aided by the difficulty of establishing what reform actually is.

In their concentration on the past act, retributive justifications for punishment tell us very little about the nature of punishment, about what punishment should actually look like. And as we discussed earlier, the constituent elements of retribution echo the main principles of justice in their emphasis on proportionality and consistency. (See Hart 1968) The maxim 'treat like cases alike' resembles retributive prescriptions as much as it does the basic

tenets of the concept of justice. But because reformation seeks 'to induce repentance', create awareness of moral guilt (Hart); to improve or socialise offenders, inculcate moral principles or make law-abiding (Honderich 1969); to individualise punishment to suit the needs of the offender; seeks to reduce the tendency to commit crime (Armstrong 1969) Hart argues that it runs counter to the customary morality of punishment. Theoretically, the principles of consistency, proportionality and equality of treatment give way to the application of measures related to the personal characteristics of the offender with some end in mind. (See Watson 1976) for a concise statement of the areas of conflict between retributivism and utilitarianism.) The recognition by the neo-classicists that punishment is experienced differentially and that it can have a reformatory effect -

"created an entrée for the non-legal expert - particularly the psychiatrists, and later, the social workers - into the courts." (Taylor, Walton and Young 1973, p.8)

The increasing emphasis on the reformation and welfare of the juvenile offender (see Bean 1976) since the Gladstone Report in which reformation was formally accepted as an appropriate objective has culminated in systems of juvenile justice more akin to social than to criminal justice.

But to return to our earlier argument, deterrence can be construed as having a reformatory effect. Ewing, (1929) for example, suggests that whereas punishment as deterrence does not in itself 'reform', it does provide a means by which the criminal law will eventually be obeyed from moral motives and not just through habit. This applies both to actual and potential offenders, though in the case of the latter, Ewing's argument sounds more akin to psychological speculation than to philosophical theorising. (The opposing stance is taken by Benn (1958) who maintains that the reform of offenders cannot be attained through deterrence.) Conversely, reformation could be attained by means other than punishment such as education, vocational guidance or social work, none of which necessarily entail, though they may, the experience of distress or suffering which Flew considered one of the prime characteristics of the institution of punishment. (Flew 1954; Honderich 1969)

Nor could a justification for punishment be based purely in reformatory arguments since the logical conclusion that could be drawn (Honderich 1969) is that it would only apply to those who had already committed offences. It would be difficult therefore to develop an argument for the prevention of offences in general and not simply of those committed by individuals convicted at least once. The contemporary elision of the concepts of delinquency and non-delinquency (in cases of need, deprivation etc.) and the development of recent programmes for dealing with delinquency espouse prevention as an appropriate aim.

The difficulty of adequately establishing a justification of punishment either in terms of retributivism or utilitarianism has meant that there have in fact been a number of attempts to reconcile the two. Acknowledging the problems identified above Armstrong argues that

"pain is inflicted for the sake of a number of different ends. Amongst these are the protection of society, the reform of the criminal and the deterrence of others."

and in view of the traditional retributivist attack he further states

"All these ends are in themselves both morally and socially desirable; where the infliction of pain is justified by desert, pain may be a morally permissible means to achieving them." (Armstrong 1969, p.156)

The insistence that punishment, where utilitarian in objective, be limited in application to only those legally responsible is also taken up by Ewing (1929), Bradley (1958), Ross (1925) and Mabbot (1939).

We have seen that retributive justifications, ideal typically, were essentially backward-looking, concentrating on the offence and the state of mind of the offender at the time of the offence. In contrast, utilitarian justifications, though they do not ignore the offence and rationality of the offender, were essentially forward-looking in that the consequences of punishment were employed in its justification. Thus, the protection of society, deterrence and the reformation of the offender are amongst the objectives propounded. However, inasmuch as even in retributivist philosophy some benefit does accrue, such as the annulment of wrong and the restoration of right, it could be, and has been, argued that retribution is merely

disguised utilitarianism. Hart's argument that at different points in a legal system, different types of justification may be required, finds its parallel in a compromise theory of punishment. Gordon also argues that though the law is mainly utilitarian, because of its concern with the ordering of society, nevertheless because 'it is closely bound up with ordinary morality it contains many deontological features' (Gordon 1967)

The historical significance of utilitarianism for both penal philosophy and criminological thought is that it laid the foundations, through the classical and neo-classical school, for the more therapeutic and treatment oriented developments that were to follow.

"The move toward a therapeutic response to crime can be seen as, at least in theory, an outgrowth of the utilitarian outlook. If one is going to evaluate punishment solely in terms of its social consequences - e.g. its capacity to reduce crime - one might reasonably reach the conclusion that therapy would do a better job of bringing those consequences about." (Murphy 1973, p.8)

Some utilitarian justifications as we have seen rest on a conception of the offender as a rational being whose reformation can be achieved through punishment. The justification for such punishment-treatment is seen to be in the attainment of stated ends. But other utilitarian approaches, conceiving of criminality or delinquency as illness or disease reject even punishment-treatment favouring instead an approach based on non-punishment treatment and a conception of the offender as someone whose behaviour is beyond his control. It is to a consideration of this perspective that we now turn.

CHAPTER III

DETERMINISM, RESPONSIBILITY AND TREATMENT

Determinism and Punishment

In the previous chapter, we considered the relationship between conceptions of human action and moral responsibility noting that, in general, the principle that no man can be held responsible for what he could not have helped doing holds good. But as we saw, it is a matter of some disagreement how to interpret such a principle. The importance of the qualifications that it imposes on human action however is that, as in the case of retributivism and utilitarianism, they allow us to determine who may justly be punished. But the question prompted by the determinist thesis on action is not that of who may be held morally responsible and punishable but whether anyone can ever be deemed so. Modifications in the criminal law and in penal sanctions have paralleled, and in part been attributable to, the increasing recognition that there are categories of offenders who may not be justly punished. Rather, treatment and help are considered more appropriate forms of intervention. Where the compatibility theorists advocated treatment-punishment in that punishment sought to attain certain ends such as the reformation of the offender, the determinists argue that such ends can be achieved through treatment or welfare measures alone. The treatment approach though essentially different in its constituent requirements nevertheless derives from the less extreme forms of utilitarianism, as we saw from the quotation by Murphy. (Op. cit., p.57)

In this section, we shall consider the argument that criminality is in fact illness or disease requiring help or treatment, and the implications that this has for the concept of responsibility. It should be obvious also that what were seen to be central requirements for any practice to be called punishment are not easily accommodated within a treatment approach to social control. The conceptual framework supporting treatment and punishment in fact conflict on a number of points.

The notion of 'treatment' can have a wide or a narrow application. (Watson 1976) In its wider application treatment also includes punishment, as we have seen in the previous section, since

certain theories of punishment seek to attain ends or objectives such as the reformation of the offender. The vagueness of the concept of treatment has, in this wider use of the term, been compounded by the fact that many authors and government reports use treatment or training, reformation or rehabilitation interchangeably. (Bean 1976; Watson 1976) But again, it is interesting to note that early moves to incorporate more welfare-oriented measures within criminal justice systems were made in relation to punishment of juvenile offenders, epitomised in Section 44 of the 1933 Children and Young Persons Act. Likewise, though the arguments that offenders should be treated and not punished have been with us for some time now, it has been in delinquency control that the more radical changes have been introduced, especially towards questioning the validity of the concept of responsibility. But utilitarians employing treatment in its wider application have, until fairly recently, taken seriously the notion of responsibility. (Hart 1968) An important criterion for both retributivists and utilitarians has been that, in some senses, the offender must be held to be responsible. However, advocates of treatment in its narrower sense, such as Wootton, have challenged this. In its narrow application, treatment is non-punitive and excludes punishment as a suitable means for preventing or reducing crime, referring mainly to the application of non-punitive measures. Similarly, the offender, rather than being conceived as a responsible individual, is seen as being non-responsible in that his behaviour is the result of predisposing factors. (Wootton 1959; Flew 1973) Thus the utilitarian position is advanced to the point where crime, or more correctly, criminality, is conceived of as disease. (Flew 1973) As Rock (1973) points out, the medicalisation of delinquency, or the application of the medical analogy to criminality culminated in the dissolution of the metaphor of 'as if'. That is, where formerly criminality may have been conceived of as if it were disease, it came to be construed as disease. The 'as if' drops out and criminality is disease.

From such a viewpoint, there is little reason to seek to establish the moral responsibility of the offender whose behaviour is seen as pathological, or symptomatic of need. (See Kilbrandon Report) There are two arguments here. Firstly, because the treatment

or medical approach to crime is built upon a deterministic framework, it is theoretically futile to attempt to establish moral responsibility. This argument associates the treatment model with positivist criminology. (Radzinowicz 1965) However, it is also seen to be practically difficult for courts to inquire into the question of whether or not a person could have done other than what he did do. (Wootton 1959) Since Wootton argues that this is impossible, she is logically committed to the position that the very question of responsibility should be bypassed. Thus, her position rests on a blend of theoretical and practical implications. In the literal sense of the word, criminals are patients in that they suffer from or experience conditions such that their criminal behaviour is a necessary outcome. From this viewpoint then, crime is disease and should be dealt with in a manner similar to that employed in the prevention or curing of medical ailments. What such a perspective ignores, however, is the social and cultural context not only of criminality and also of the definitions of the behaviours which constitute 'crimes', (Phillipson 1971) but also of the paradigm of medicine (Flew 1973). Nevertheless, a number of others adopt a treatment or social hygiene approach to criminality, rejecting the need to establish and ascribe responsibility. Eysenck, for example, argues

"We would regard behaviour from a completely deterministic point of view Therefore to attribute to individuals greater or lesser degrees of responsibility seems, from this point of view, a rather meaningless procedure."
(1970, p.183)

Glueck, quoted by Wootton states

"The question of responsibility would not have to be raised, if the concept of the management of the anti-social individual were changed from that of punishment as the main instrument of control, to a concept of the anti-social individual as a sick person, in need of treatment rather than of punishment." (Wootton 1959, p.248)

And in favour of the abandonment of the concept of responsibility, Wootton herself recommended

" a shift in emphasis on the treatment of offenders away from considerations of guilt towards choice of whatever course of action appeared most likely to be effective as a cure in any particular case." (1959, p.251)

The semantics of crime control as Tappan appreciated some time ago has thus undergone considerable change with the differing theoretical frameworks. The language of crime, responsibility and punishment with the advent of the medical model has given way to the technical jargon of pathology, diagnosis and treatment.

One argument advanced in favour of an approach based on curative or preventive measures and seeking to promote social hygiene is that it would be a scientific and rational mode of crime control rather than a system of punishment. (See Haksar 1963, 1965) The reasoning is that less value-judgments would be made since the decisions to treat and deal with offenders in particular ways would be purely technical questions based on the diagnosis and prognosis of the professionally competent. (See Pearson 1975) But this would be to ignore that even a system of prevention whether it be punitive or treatment-oriented is required to stipulate which behaviours ought to be treated or dealt with and that is a matter for moral judgment. (Bean 1976; Haksar 1963, 1965) The medicalisation of delinquency does not thereby remove it from the context of moral discourse. (Pearson 1975)

But the argument for the elimination of responsibility in favour of an approach akin to social hygiene can also be countered for other reasons. MacCormick (1974), Hart (1968) and Fox (1974) express concern that though the medicalisation of delinquency reflects a humanitarian approach to dealing with offenders, to eliminate responsibility altogether would be to deprive individuals of fundamental human rights. Offenders in fact have a right to be held responsible or a right to punishment. (See Kittrie 1971)

Under the treatment approach, offenders are however seen as being in need of treatment which is dictated by the 'nature' of the condition and its supposed causes, not by reference to the offence. The conception of human nature employed is essentially deterministic with important implications for the means accepted as appropriate for dealing with offenders. The treatment model, for example, is often associated with the evolution of individualisation where measures are designed to meet the needs of the offender; it is also associated with the growth of discretionary powers available to those responsible for sentencing. Consequently, the treatment model in practice requires considerable information on the offender for

the purpose of diagnosis and treatment and in this respect the link between such a philosophy and positivist criminology is obvious for a number of reasons. (Hart 1968; Bean 1976) Firstly, the positivist conception of the unity of scientific method has meant that offenders became the object of inquiry in an attempt to locate the 'causes' of criminality. Only by discovering such causes can crime ever be dealt with in a scientific and rational manner. What has been referred to as the deterministic position on crime (Radzinowicz 1965) and 'scientific ideology' has fostered the idea that the control and prevention of crime is better suited to a form of intervention based on scientific principles. The elimination of responsibility is therefore a logical consequence of a treatment philosophy in which criminality is considered to be the necessary outcome of predisposing conditions. That these conditions are subject to scientific inquiry at least according to positivist criminology, further enhances the theoretical framework of positivism as a basis for crime control.

Moreover, positivist criminology sought to establish general laws or generalities about the causes of criminal behaviour, thereby laying the basis for an argument that preventive action rather than simply curative action could be taken. Given that general statements could be made about what causes crime, then crime, as could illness or disease, could be predicted and anticipated. Wootton's work, as does that of others, conceives of criminality as a treatable condition not only similar to, but in actuality being, mental abnormality. But as we shall see later, the theoretical prescriptions about criminality or delinquency and their causes are not restricted to purely pathological formulations. Whereas positivist criminology showed remarkable homogeneity in terms of the logic of determinism and its application to the research and correction of criminality, there was considerable disagreement as to what were the supposed causes. The inability to locate objectively determined factors to account for delinquency has meant that formal systems of delinquency control have taken various forms and are continually under review. Because the difficulty in 'identifying' the causes of delinquency is more theoretical than practical, changes in the administrative and institutional structure of juvenile justice are usually dependent on emerging

theoretical prescriptions on the causes of, and how best to deal with delinquency. Within a utilitarian framework, as in the neo-classical penology, (Taylor, Walton and Young 1973) which has dominated courtroom and penal practice, the introduction of experts such as psychiatrists and social workers reflected the acceptance of information which could be used in mitigation without challenging the concept of responsibility fundamentally. But whereas penal practice has been dominated by such an approach, criminological and sociological research has been conducted within a more rigorous positivistic framework with all the assumptions about determinism and the rejection of responsibility implied therein. As Taylor, Walton and Young state (1973, p.10)

"Periodically, the two models clash, and indeed, the debates about responsibility in penal philosophy bear testimony to the attempt of the classicists (Hart 1962) to resist the positivist incursions (Wootton 1959; Eysenck 1970)

One of the implications of the treatment approach is that there exist those who know how to identify and how to treat the conditions or causes of criminality and delinquency. As in medicine, there must be a diagnostic framework and conceptual apparatus which determines not only who is to be treated but also, just as importantly, who is to treat. (Berger and Luckman 1971) Thus, the medicalisation of delinquency implies that treatment can only be legitimately carried out by people qualified and familiar with particular bodies of knowledge and techniques. Thus, the ideological clash referred to by Taylor, Walton and Young finds expression in the lack of consensus about delinquency control displayed by the different agencies that compose and participate in social control networks. (Asquith 1977) It is in relation to juvenile justice where the increasing role of the experts (Bean 1976), the extension of the treatment and preventive functions of juvenile courts (Tappan 1949) and the almost exclusive abandonment of principles of due process (Rosenheim 1962; Fox 1974; Grant 1976; Faust and Brantingham 1974) that the ideology of positivism has found its greatest expression. It has also produced conflict with the principles of justice.

Whereas utilitarian theories of punishment could accommodate treatment as an acceptable objective of punishment, the more rigorous

positivist conception of criminality rejects punishment as an appropriate form of penal practice. Since offenders are not responsible they are not punishable but are appropriate subjects for treatment. Treatment and meeting the needs of offenders are explicitly accepted within a theoretical framework which derives from a deterministic formulation of criminality. The conflict between justice and therapy is thus epitomised in the developments which have given responsibility for decision-making to experts who are more concerned with assessing, diagnosing and classifying deviants than about considerations of justice. (Bean 1976) The paradox is that in many systems of justice resting on the treatment philosophy such responsibility is not given to experts but ultimately to lay people. For the purpose of the present thesis this is a most significant factor in any attempt to analyse the exercise of discretionary powers in respect of children who commit offences.

Crime and Determinism

In challenging the relevance of the concept of responsibility Wootton and others have tended to discuss criminality in association with the concept of abnormality in general and mental abnormality in particular. Haksar (1965) even discusses criminality in the context of psychopathy though he does attack Wootton's attempt to develop a scientifically respectable theory and a morally neutral approach to crime control. This is perhaps not surprising in light of the fact that differentiation between offenders and non-offenders is an important principle in the positivist tradition of criminology and one which is logically requisite to studies which involve the use of control groups and experimental groups. (Vold 1958) The danger of such an approach is that it presents an overdetermined picture of man (see Wrong 1961) or, as Matza (1964) puts it, it accounts for too much delinquency. And indeed as we shall argue in this thesis, accounts of behaviour which are couched in a deterministic conception of human nature are not readily accommodated in the language of everyday life.

In classical criminology, and even within the revisionism of neo-classical philosophy, the offender was seen as a rational, responsible individual whose criminality, in the absence of mitigating circumstances, merited punishment. However, within what has

come to be known as the positivist revolution, (Taylor, Walton and Young 1973) a fully deterministic account of criminality was espoused. The implications of positivism, deriving from the basic premise of the unity of scientific method were twofold.

Firstly, the changing conception of criminality as essentially determined meant that it could be studied in much the same way as could other allegedly similar phenomena. Thus, the search became that of the causes of criminality. As a corollary of this, we would argue that positivism does not easily reconcile the conflict between a rationalistic conception of normal law-abiding behaviour and a deterministic conception of abnormal or law-breaking people.

Radzinowicz likewise asserts

" the positivists may not all have been absolute determinists but they were all too firmly convinced of the deep influence that the constitutional make-up of offender and his immediate environment had upon criminal conduct to admit that he could be responsible." (1965, p.1056)

Secondly, as well as presenting prescriptions about human nature and more specifically about criminality, positivist criminology was committed methodologically to a particular kind of research. Thus, 'the essential point in positivism (was) the application of a deterministic and scientific method to the study of crime'. (Vold 1958, p.42) And because positivist criminology rested on what we shall call the logic of difference (that is, that there are basic differences between offenders and non-offenders) the overriding purpose became that of establishing significant differences between individuals.

Though our discussion of treatment referred specifically to the treatment of individuals by 'psycho-social' experts, (Bean 1976) theories of delinquency do not always account for the phenomenon in terms of characteristics or properties intrinsic to the individual. It could be argued for instance that more recent developments in the sociology of crime and deviance, which are less concerned with factors in an individual's background, are for this very reason difficult to reconcile with a correctionalist approach to delinquency or crime control. What we seek to do in the following section is to present brief statements of what seem to us to be important orientations in theories of crime. These are -

- (i) Biological determinism
- (ii) Behaviourism
- (iii) Psychoanalytic theories
- (iv) Sociological / Environmental Determinism
- (v) Processual Determinism

Once again our concern is to identify possible available ideologies from which the working frames of relevance of lay members of the community may be derived. May (1971), Box (1971) and Giddens (1976) have all suggested the importance of formal theoretical prescriptions in informing the lay man and in providing him with stereotypes of delinquency, as well as assumptions about causation. The significance of the five perspectives which will be discussed in rather crude simplistic terms is that they are all couched in the language of determinism (though they differ in substantive focus) in which conceptions of responsibility and considerations of punishment may not be easily accommodated. Again we are not suggesting that each logically tenable position is in fact held exclusively by individuals nor that the different orientations can be articulated by people such as panel members or magistrates. Rather, we wish to suggest that lay ideologies of delinquency causation and control will be informed to some extent by more formal theoretical considerations. In ordinary commonsense moral discourse, it may in fact be possible to identify elements of a number of the orientations offered since logically tenable positions are not always maintained in practice.

(i) Biological determinism

Biological or physiological explanations of crime, associated with the development of positivist criminology, particularly the early work of Lombroso, have their roots in the wider implications of biologism for social theory. (1876) It is in this respect that the Darwinian influence on the early biological determinists are apparent. (Vold 1958; Taylor, Walton and Young 1973) In reference to behaviour in general

" all biological explanations rest on the basic logic that structure determines function. Individuals behave differently owing to the fundamental fact that they are structurally different." (Vold 1958, p.43)

The basic 'constancies' (Pearson 1975) can be identified in biological determinism.

Biological inferiority: a recurrent theme in biological determinism was the notion of biological inferiority or difference, notions which had both substantive and methodological implications. Thus in the work of Lombroso (1913) and Garofalo (1915), biological inferiority is an important principle. Lombroso, for example, attributes criminality to the 'atavistic' characteristics of offenders. That is, criminals were evolutionary throwbacks and criminality could be identified by the presence of physical 'stigmata' as supernumerary nipples or unusual skull size. The nature of the biological differences were as varied as the theories, but they all had in common the assumption, theoretically rooted in the times, that the criminal was biologically different, abnormal or inferior to the law-abiding citizen.

Even when the environment was seen to be a factor in the production of criminality, the effect was qualified as its influence was primarily on what was no more than a 'low grade organism'. (Hootton 1931)

With the emphasis on constitutional inferiority, it is not surprising to find that criminals were also conceived of as in some ways mentally as well as physically inferior. There has been a long tradition in criminology in which criminality has been associated with low intelligence or mental feebleness. (Vold 1958) The implications of defects of reason or the will for the capacity of individuals to realise the nature and quality of their behaviour is obvious. It is no coincidence that Wootton's discussion of the problematic nature of responsibility is related to a discussion of mental abnormality. The very history of the concept of mens rea and the McNaghten rules is paralleled by the increasing attack on the concept of responsibility in the wake of 'scientific knowledge' about human behaviour. Biological positivism has been a particularly potent source of change in this respect, as Wootton's own work testifies.

Heredity: Derived as their theories were from Darwinism, the biological determinists placed great importance on heredity as a crucial factor in criminal aetiology. (See Vold 1958) Later theories were also logically committed to the heredity factor, perhaps the most notorious being that employed to explain the activities of the Jukes family. (Dugdale 1877) More contemporary theories are even more

specific, as in the case of the XYY theory in which criminality is attributed to abnormal chromosomal composition. (See Sarbin and Miller 1970) Whereas Lombroso had sought evidence in the atavistic features of man, others were committed more to studying physiological make-up and genetic constitution and possible combinations of such factors (Healey 1915; Burt 1944; Hootton 1931)

Studies of twins provided an important strategy for biological determinism where the effects of heredity could be controlled for (Lange 1930) other than by simple statistical manipulation. (Hootton 1931; Goring 1913)

Though the theories differ substantively in the factors adduced as contributing to criminality, the importance of heredity is reflected in common-sense assumptions about crime causations. As Vold suggests

"Explanations in terms of heredity go back to common-sense observations that children tend to resemble their parents in appearance, mannerisms and disposition. The popular adage 'as father, so son' is a much older description of everyday folk knowledge than any scientific study of family influence" (1958, p.90)

Criminal types: A criticism made by contemporary, new criminologists of biological determinism is that the search for characteristic differences between criminals and non-criminals rests upon what they consider to be a false assumption. Poveda (1970, p.59) suggests that

"This false dichotomy has usually taken the expression in the characterisation of criminals as belonging to some criminal type. Where earlier criminal type myths attempted to link the criminal to certain physical characteristics or mental characteristics, the modern myth of the criminal type in identifying the criminal with a particular social type - poor, lower class, slum dweller."

The 'earlier criminal type myths' categorised criminals in terms of their membership of different categories usually derived from the assumptions of the different theoretical frameworks employed. The very notion of a criminal type itself is derived from the logic of difference and depends as much on the notions of biological inferiority as on heredity. Perhaps the best example of 'typing' is in the relationship drawn by Kretschmer (1921 and later Sheldon (1940) between criminality and body shape.

The development of biological determinism, associated as it was with the emergence of positivistic criminology had a number of implications. With the emphasis on difference or abnormality, heredity and types, the biological approach further emphasised the need to study the offender. Whereas the 'classical school had exhorted man to study justice, the positivist school had exhorted justice to study man'. Thus as well as providing theoretical accounts of the causes of crime, the biological determinists at the same time challenged the validity of legal concepts such as responsibility (see Ferri 1895) and as Bean points out (1976), provided the entrée for a body of experts into the criminal justice system. The need to understand the offender became a constituent stage in the process of deciding to deal with him. Radzinowicz also argues that one of the merits of the positivist concentration on the individual was that paradoxically, it prompted a renewed interest in the significance of social factors in crime causation. (1965) In the next section we shall see that although the work of Eysenck and Trasler was derived from biological determinism, it nevertheless, in different degrees, sought to accommodate consideration of wider social and sociological forces.

(ii) Behaviourism and Criminality

The most important advance made by Eysenck (1970) and one which makes his theories more sophisticated than those of the early biological positivists is that he does not only set out to explain why people offend. Rather, he also seeks to establish how it is that people do not offend. His theory of human behaviour tells us as much about the process of socialisation as it does about the disposition to commit offences.

The early criminologists, but Lombroso less than others (Radzinowicz 1965), had largely ignored the influence of environmental factors. (Morris 1957) But as we shall see, Eysenck's theory of criminality presupposes an interplay between genetic or biological constitution and more social or sociological factors. His conception of human nature is in that respect additive, the cumulative product of the influence of certain social forces such as the family on biological givens. It was on this element of Eysenck's work that Trasler (1962) was to construct his analysis of the apparent class bias in the distribution of criminality.

Behaviourist explanations of criminality or delinquency owe much of their importance and validity to the early experimental work of Pavlov (1927) and Watson (1920) as to the philosophy of behaviourism in general. Unlike psychoanalytic theories, behaviourist psychology assumes that aberrations in behaviour, such as neurosis or criminality, are not merely indications of some endopsychic conflict but are maladaptive responses acquired by a process of faulty learning. Criminal behaviour is but one maladaptive response.

There are essentially three ways in which behaviourist psychologists can account for criminality.

Conditionability: Eysenck suggests that behaviour can be acquired by learning or by conditioning, susceptibility to which is related to the degree of extraversion displayed by an individual. It is by conditioning, or as Trasler (1962) calls it 'social learning' that values and attitudes of the social mores are acquired and which serve to check asocial or hedonic impulses. Criminality can then be explained as a phenomenon which occurs when there is a lack of social conditioning as a result of which the individual has no means of restraining himself from the pursuit of primary atavistic impulses. Central to Eysenck's explanation of criminality is that this lack of conditioning can be attributed to the inability of some sections of the population to be affected by conditioning techniques or the ordinary processes of socialisation.

Following Pavlov, (1927) Eysenck attributes susceptibility to conditioning to physiological processes underlying behaviour (especially the mechanism of excitement and inhibition) and conceives of personality as linked to this biological endowment. Criminals or delinquents are characterised by high levels of neurosis and extraversion, which makes them biologically poor subjects for conditioning. The significance of the high neurotic score lies in the assertion that conditioned anxiety responses to antisocial behaviour have not been instilled in the individual. More generally, it means that the criminal does not readily acquire the necessarily strong conscience against hedonic or antisocial impulses.

However, we would expect a random distribution of criminality amongst the population if conditionability were truly associated with endowment. As Trasler himself noticed, this does not appear to

be the case and it is in his attempt to account for the apparent class bias in the distribution of criminality that he develops Eysenck's earlier position.

Techniques of socialisation: Socialisation, if it is adequate, should provide the child with the accepted behavioural repertoire and basic values of his social milieu. In behaviourist psychology, it is the conscience, instilled through the child's contact with the symbolic environment, which inhibits antisocial behaviour.

If environmental and social pressures were to exist in an objectively equal manner for all, we would expect to find extraverts to be undersocialised because of their inability to be readily conditioned. But since the distribution of those with high extraversion scores is fairly even over the population as a whole, there are other equally important factors to be taken into account in explaining criminality.

Trasler (1962) comments that a significant number of convicted offenders come from families of unskilled workers but that this is not to be taken to suggest that the values of this group are at variance with the rest of society. Techniques employed during socialisation must follow certain stipulations if it is to be adequate, and since this does not appear to be the case amongst those in lower socio-economic positions, their children will be more disposed to criminal and delinquent behaviour.

Trasler's argument is based on the notion that there is a marked difference between the child training techniques employed by the middle classes and the lower classes. Because the distribution of extraversion is assumed to be fairly even, the higher incidence of criminality in certain sections of the community can be explained by reference to the way in which they rear their children. In particular, child-rearing techniques as practised by middle-class parents inculcate moral principles; working-class children are not however offered the same opportunity for acquiring general principles but are brought up in such a way as to relate punishment and reward to particular actions. The social avoidance responses which should occur on the contemplation of an idea or an intention to perform asocial actions can only be activated by a degree of autonomic response which the working-class child has not necessarily been induced to associate with such behaviour.

Since there is a higher incidence of broken homes in working-class areas, the child from such a background is more likely to be subjected to a very inconsistent programme of socialisation. On this argument it is not so much that coming from a broken home or a home in which there is considerable problems ipso facto determines that an individual will become delinquent or criminal. Rather, it is by living in circumstances in which there is an absence of proper parental care or in which such care is inconsistently administered that determines susceptibility to delinquency or criminality.

Antisocial values: Although conditioning may be technically effective, the values to which a person is conditioned may in fact be antisocial in their nature. They may not be what Eysenck calls 'in the right direction'. The behaviour advocated by such values may be contrary to those upheld by society at large. It is not probable, the argument goes, that the mother who is a prostitute or the father who is a thief will accept the validity of social values which proscribe theft and sexual immorality. The very social values which they offer to their children could conceivably be antisocial in nature.

'Socialisation' into deviant values would be more easily achieved with the introverted person because of his susceptibility to conditioning. We then have the paradoxical position in which those more likely to become criminal are in fact those who are more susceptible to conditioning.

Neither Eysenck nor Trasler suggest that the child whose father is a thief will not receive at least some social training since the child will also have contact with those who have been socialised into acceptance of dominant values and morality. He meets children at school which is itself a potent source for the transmission of the accepted social and moral code. What their argument does suggest is that in such circumstances such a child would experience such an inconsistent socialisation experience as to prepare him poorly to meet the demands and sacrifices required by social life.

Derived as it is from Humean empiricism, behaviourism regards behaviour from a completely deterministic stance. 'The individual's behaviour is determined completely by his heredity and by the environmental influences which have been brought to bear upon him' (Eysenck 1970) In this respect, his theory can be associated with

behaviourist philosophy in general. (see Skinner 1973; Beech 1969) Since the efficacy of conditioning depends upon the individual's capacity to form conditioned anxiety responses to inhibit antisocial conduct, or the environmental influences which affect the conditioning process, what one regards as the appropriate measures of control is dependent upon diagnosis of the causes of failure in socialisation. Therapeutic nihilism is not entailed because of the biological or sociological determinants of behaviour. Indeed, the behaviourist argument is that only by taking such factors into consideration can we do anything to promote the welfare of the individual.

(iii) Psychoanalytic explanations of crime and delinquency

Despite their many differences, there are a number of points of fundamental similarity between psychoanalytic and behaviourist theories of crime or more correctly criminality. The psychoanalytic framework for example suggests the means by which the accomplishment of normal social behaviour is achieved and does not simply concentrate on delinquency or criminality. There is little analytical difference between 'normal' and 'abnormal' or deviant behaviour since psychoanalytic explanations of aberrant behaviour rest on the assumption that the very antisocial impulses which motivate a person to criminal behaviour are not absent in the law-abiding citizen. (Vold 1958; Friedlander 1947; Glover 1960) As with behaviourism, explanations given of deviant or delinquent behaviour are derived from more general statements central to psychoanalytic theory about the process of socialisation. Delinquent behaviour can therefore be explained by the same rationale employed to account for apparent abnormal features or 'parapraxes' (Horney 1947) such as slips of the tongue. As we shall see, one importance of psychoanalytic theory has been that it helped underpin, especially through the work of people like Bowlby (1969), the notion of the family as a significant force in the growth and development of children. The growth of social work as a profession and the role it has played in attempts to control or meet the problems of delinquency can in part be attributed to its origins in a knowledge base which itself prompted ideologically attractive explanations of criminality. (Bean 1976; Pearson 1975)

Although psychoanalysis appears to lack the scientific respectability and systematic rigour (Vold 1958) associated with behaviourism, it is nevertheless also rooted in biological constitutionalism. Freud's own training in medicine is apparent in his theory of psychoanalysis and

" psychoanalysis, for all that it is a break with simple medical thought, remains impregnated with biological and physiological assumptions."
(Taylor, Walton and Young 1973, p.36)

The different personality structures and psychic forces posited by Freud in his earlier and later works and which were influential in the search for the causes of crime are then also dependent upon a conception of biological determinism. Actions, feelings and psychic processes are all strictly determined. (Horney 1947)

Despite the many varieties of psychoanalytic explanations of crime, what they have in common is the assumption that crime is the result of psychic conflict. (Vold 1958; Rickman 1951; Friedlander 1947; Glover 1960) In his early work Freud had argued that such conflict was the result of the tension between the libido (the basic primitive urges of the individual) and the demands for conformity. His later and more famous formulation distinguished three basic personality elements - the id, the ego and the superego. The id, the unconscious part of the mind contains all that is innate and in particular, the instincts whose drive is for immediate satisfaction of essentially hedonic pursuits. It is through a strong ego and superego, inculcated by healthy processes of socialisation that these instinctual urges are repressed. Without them

"there is no doubt that greed, demandingness, possessiveness, jealousy and competitiveness (i.e. all the normal elements of infantile instinctual life) become nuclei for later dissociality." (A. Freud, 1966, p.170)

Most psychoanalytic theories of delinquency refer to the potential for conflict between the innate instinctual drives of the individual and the demands of a truly social life. Glover (1960) for example, attributes delinquency to the failure of 'domestication' of a naturally wild animal. Friedlander (1947) posits the imbalance of the three psychic elements as the condition of which delinquency is but a manifestation. More prosaically, Aichorn (1925; 1936) sees anti-

social behaviour as representing the 'coefficient of friction' between parental influences and the instincts of the child. An added factor in Aichorn's work is that his 'wayward' concepts refers to all children who display behavioural problems, not just delinquents.

The varieties of Freudianism and the difficulty of objectively documenting individual cases and the reasons for delinquency have been attributed to the lack of scientific rigour associated with psychoanalysis. (Vold 1958) This may well give the reason why many of the writings in this genre take the form of detailed case studies. (See Alexander and Healey 1935) Nevertheless, some generalisations can be made about the way in which psychoanalytic theories characterise crime and account for the different mechanisms of failure in the socialisation process.

Rickman (1932) suggests that the instinctual drives can erupt and express themselves either directly or indirectly. Indirect expression involves a turning in of hostile attitudes on oneself with subsequent feelings of guilt and shame. Such feelings, he argues, can only be dissipated by infliction of some form of punishment, hence the drive towards asocial behaviour in general and delinquency in particular. (See Vold 1958; Doestoevsky 1970) More direct expression is associated with the inability of the individual to control his instinctual urges and prevent their expression in overt behaviour. Thus as well as the guilt-ridden and neurotic delinquent, Friedlander (1947) is also able to identify the unsocialised delinquent whose basic urges are allowed to run wild through faulty socialisation.

"Psychologically, their behaviour is due to the fact that they are still dominated by the pleasure principle instead of the reality principle." (p.110)

Criminals then ought not to be viewed with respect to their position in society but as individuals with a particular way of dealing with their instinctual urges. (Rickman 1932) Certainly, the picture that is often drawn in the literature of the delinquent is that of a person who is selfish, aggressive, hedonistic and emotionally infantile. (See Glover 1960; Aichorn 1925; Friedlander 1947; Rickman 1932; Bowlby 1969)

The Bowlby revolution

We pointed out that the dialectic between organism and environment was not simple but that the endopsychic arrangement of individuals at particular stages in development was an important consideration. What is important for psychoanalytic thought is that explanations of delinquency are historically and biographically rooted. The significance of this position is best epitomised by one of the more famous writers in this tradition - John Bowlby.

Bowlby's general thesis rests on the importance of the family and especially of the mother in the laying of foundations in the first years of life. Thus in 1951 he stated -

"It is submitted that the evidence is now such that it leaves no room for doubt regarding the general proposition - that the prolonged deprivation of the young child of maternal care may have grave and far reaching effects on his character and so on the whole of his future life." (1951, p.46)

It was on this basis that he posited the notion of 'maternal deprivation' as the crucial factor in the disposition to delinquency and to other forms of psychological disturbance. (See Bowlby 1969) Children who do not experience the bond of normal relationships with a mother or mother substitute are therefore more likely to develop a delinquent or disturbed personality. In particular, Bowlby (1946) and others (Bender 1947) had noted the fact that delinquents who were affectionless and could not sustain stable relationships with others, especially adults, had experienced traumatic separations from their mothers. They may also have experienced institutional care. It is perhaps at this point that the similarities between behaviourist and psychoanalytic theories of delinquency, particularly in reference to parental care and guidance, are most pronounced. Certainly, Bowlby and others (Glueck and Glueck 1950; Wootton 1959) had noticed the relationship between delinquency and the broken home. Friedlander (1947) had also perceptively argued that the significance of such factors as coming from a broken home were not so important in delinquent aetiology as the effect they had on character formation. (See West 1969; Glueck 1962)

Bowlby's work had highlighted the importance of the family, and especially the mother, in its effect on the growth and development of children. This had a number of implications. Since the

mother-child relationship was considered important in delinquency causation, his theories not only presented an explanation of why people became delinquent but at the same time were employed to criticise the existing institutional arrangements for children in care. It is no surprise to find alternative suggestions in his work, especially in the direction of breaking children's homes up into smaller units, and the greater use of foster care. This was even though he recognised the danger of frequent changes of foster home. (1969) Concern with the degree and quality of discipline afforded to children meant that the family increasingly became the focus for social work intervention. This was obvious in both the Kilbrandon and Seeborn reports alluded to earlier.

Just as important, however, was the fact that the psycho-analytic framework was used to promote preventive measures in an attempt to forestall delinquency. Again, this was a recurrent theme in the debates relating to the development of juvenile justice in this country. The organisational restructuring of social work both north and south of the border was not simply in the interest of greater efficiency - it was also based on changing conceptions of social work and welfare provision and the role that could be played by early social work intervention in preventing delinquency and other behavioural problems. The recent history of juvenile justice, as we shall see, reflects increasing acceptance of a conception of delinquency as symptomatic of some underlying disturbance and of the expansion of the role played by a profession whose ideological roots (Bean 1976) lay in psychoanalysis.

(iv) Sociological Determinism

There has been a long history of association between the causes of delinquency and such factors as broken homes and deprived areas which are commonplace in the public imagery of delinquent causation. (May 1971) Earlier in this chapter we pointed out that at a time when biological positivism was emerging as the theoretical foundation for criminology, more sociologically-oriented approaches were, if not ignored, treated as less important. (Morris 1957) However, this is not to suggest that there were no attempts to develop a sociology of crime and a number of authors have in fact indicated that the first real theoretical advances in constructing a 'scientific' criminology

were made, not by the biological positivists but by early sociologists such as Mayhew. (Taylor, Walton and Young 1973; Voss and Peterson 1971; Carson and Wiles 1971) In this section, we intend to discuss the core assumptions of the early sociologists of crime, especially the ecological perspective and briefly to trace some of the later sociological developments which were either derived from or emerged in opposition to the main tenets of human ecology.

There are a number of reasons for tackling this section in this way. Firstly, it is by analysing the influence of positivism on the ecological perspective that we can more readily appreciate the conception of human nature as determined by environment. Secondly, the attempts of later sociologies to escape such environmental determinism can be seen as a response to the theoretical bankruptcy of ecology. Lastly, there have been more recent attempts to revive ecology, particularly for the purposes of urban sociology, under various guises, the most recent British effort being 'areal epidemiology'. (Baldwin and Bottoms 1976)

Whereas the biological positivists had argued that the personality, and more specifically criminality, could only be studied in relation to genetic or constitutional make-up, the ecologists argued in turn that the social structure or cultural tradition of an area could only be analysed in reference to the local environment. (Morris 1951; Voss and Petersen 1971; Taylor, Walton and Young 1973; Baldwin and Bottoms 1973) The cultural or social structure is imposed upon or epiphenomenal to the biotic substructure. (Park 1936)

But by employing concepts drawn from plant ecology, the early Chicagoans (Park 1936) sought to articulate the relationship between the social organisation and distinctive physical characteristics of what they termed 'natural areas', by which they usually meant urban neighbourhoods. The healthy community was one characterised by homogeneity and social organisation with little disruption of social life; the pathological community was characterised by social disorganisation, evidenced by such factors as high rates of poverty, high rates of delinquency, and physical and moral deterioration. For Burgess, social disorganisation was the 'basic general fact'.

Though these pathological areas were seen as being isolated from the integrative values of the larger organism, the city, they were nevertheless themselves conceived of as communities in their own right with both structure and character.

" it is assumed that people living in natural areas of the same general type and subject to the same social conditions will display on the whole, the same characteristics." (Park 1929, p.36)

It was the irreconcilability of 'pathology' and 'cultural diversity' within the ecological tradition that provided much of the impetus for later developments. Likewise, the explanation of social problems such as poverty and delinquency employed a conception of man as determined by environment, (Alihan 1938; Morris 1957) a deterministic assumption which later sociology sought to dispel. (Wrong 1971)

The more specific links between delinquency and criminality, and environment were made by Shaw and McKay. (1931; 1942) Though the ecologists placed great emphasis on physical deterioration of areas and neighbourhoods, and though such areas were characterised by constant delinquency rates despite frequent changes of population, Shaw and McKay argued that it was not their belief that delinquency is caused simply by the external fact of location. (Shaw and McKay 1942) A significant feature of their work is that their discussion of differences between communities related as much to attitudes, values and traditions as it did to physical attributes of natural areas. (Voss and Petersen 1971) Similarly, their concern with the situational contingencies of life in these areas improved on the cruder determinism of Park. Morris (1957) was later to argue also that the early Chicagoans had emphasised variables such as poverty and deterioration too much as causal factors in the ecological distribution of delinquency. The emphasis of Shaw and McKay was on the social disorganisation of areas which displayed features such as continually changing population and physical deterioration. It was through social disorganisation and the cultural transmission of values at odds with other communities which accounted for the ecological distribution of delinquency.

"The common element (among social factors highly correlated with juvenile delinquency) is social disorganisation or the lack of community effort to deal with these conditions Juvenile delinquency, as shown in this study, follows the pattern of the physical and social structure of the city being concentrated in areas of physical deterioration and neighbourhood disorganisation." (Shaw and McKay 1942, p.xxvi)

Shaw and McKay then do not only attribute delinquency to physical environment but see it along with other factors as providing the context in which boys residing in high rate delinquency areas are exposed to delinquency values. (Voss and Petersen 1971) In areas of low delinquency rates, children are thereby exposed to conventional and anti-delinquent values; in high rate areas, children are presented with a variety of contradicting standards and forms of behaviour (1942, p.172) and 'powerful competing values'. (1942, p.317) It has been argued that in this respect Shaw and McKay recognising the cultural diversity of areas were admitting not social disorganisation but differential social organisation. (Voss and Petersen 1971) The inherent conflict between the concepts of 'pathology' and 'diversity' were never really resolved by them, a source of criticism of internal inconsistency made by Cloward and Ohlin later (1960). But the theoretical implication of this tension provided a baseline for later developments which recognised the inappropriateness of a consensus of values. Even Shaw and McKay cite Sutherland (1949) because of the similarity of their work with his theory of differential association. (Carson and Wiles 1971; Voss and Petersen 1971)

What Sutherland had argued was that the cause of crime or deviance was an excess of definitions favourable to the violation of law over those definitions unfavourable to it. The notion of crime or deviance as learned behaviour recognised the theoretical bankruptcy of crime as individually (biological determinists) or socially (ecologists) pathological. At the same time, the emphasis attached to learning meant that differential association and differential organisation were to be readily accommodated within what Taylor, Walton and Young refer to as the behaviourist revisionism of Burgess and Akers. (1966)

Carson and Wiles also argue that the ecologists had prepared the way for Merton's theory of anomie, or at least had anticipated it because they

" speculated about the possible association of unconventional conduct with a discrepancy, particularly economic between idealised status and practical prospects of its attainment." (1971, p. 51)

Thus what had originally been a source of internal inconsistency in the work of the ecological school did in fact result in a number of developments which concentrated on the transmission of culture in a framework of 'ecological pluralism'. The works of Sutherland (1949), Cloward and Ohlin (1960) are all seen as being related to the ecological school either through direct heritage or in reaction to some of the major principles contained in their theories. (Voss and Petersen 1971; Carson and Wiles 1971; Morris 1957; Taylor, Walton and Young 1973)

Equally importantly, the growth of interest in the cultural transmission of deviant values gave rise to the important tradition in delinquency theory which concentrated on the origin of delinquent subcultures. Particularly prominent in this is Cohen (1955; 1966). Whether children came to learn delinquent values which competed and conflicted with more conventional values was the source of debate to be found not only in Cohen's work but also in that of Matza, Sykes and Matza (1957), Miller (1958), Cloward and Ohlin (1960) and Downes (1966) amongst many others.

What writers such as Shaw and McKay had appreciated, and what was taken up in these other developments in sociology, was that the emergence of crime and delinquency required some theoretical conception of the cultural transmission of a criminal tradition. (Taylor 1971, p.128)

"The ecologists were not just painting elaborate backgrounds against which deviants could strut. They were trying to provide links between dilapidated houses and gang life, between population density and delinquency, between physical deterioration and moral deterioration."

Biological and personality theories of crime had in the main posited internal forces as the determinants of delinquency and criminality and as the means by which delinquents could be

differentiated from non-delinquents. Though more sociologically oriented theories do attempt to relate the individual to his environment, whether symbolic or physical, they are themselves generally no less deterministic or positivist but have merely relocated the search for causes. One of the more significant contemporary problems in sociological theory is the attempt to evolve a theory of society and man which reconciles the competing concepts of voluntarism and determinism. (Giddens 1976) It was just this failure of the ecological school and of later sociologies to articulate the relationship between man and his environment that makes them subject to the criticism of determinism. (Alihan 1938; Taylor, Walton and Young 1973; Matza 1964) Even in subcultural theory, the nature of constraint is only different in content, not in form, from biological or personality theories. Matza states:

"It is ironic that the sociological view which began as a protest against the conviction that the delinquent was something apart has managed again to thrust the delinquent outside the pale of normal life. Such is the force of the positivist determination to find and accentuate differences." (1964, p.18)

(v) Processual Determinism

In this section we shall consider what has variously been called labelling theory, interactionism, social reactions theory and social control theory. Though there are subtle differences between the statements presented by the main theorists it is what is common to their work that is our concern here; the relativity of the concept of deviance and the importance of the notion of process. Just as importantly, it is argued that attempts to confront the problem of delinquency or deviance, far from alleviating it may well aggravate or perpetuate the phenomenon since social control either leads to or creates deviance. Any adequate analysis of deviance must then focus on the nature of social control in the processing of deviance which is conceived of as 'some sort of transaction between the rule breaker and the rest of society'. (Cohen 1966)

The labelling theorists (I shall use this term hereafter to refer collectively to the different positions) rejected earlier attempts to explain deviance for a number of reasons. Becker, for example, criticised the medical analogy since it located the source of deviance within the individual and ignored the significance of the very process of judgment itself as part of the phenomenon. (1963)

Deviance is not objectively but subjectively problematic since as we shall see, a major area of concern for labelling theory was the influence of societal reaction or social control in the commitment to deviance. The importance of such a position is concisely stated by Kitsuse.

"I intend to shift the focus of theory and research from the forms of deviant behaviour to the processes by which persons come to be defined as deviant by others."
(1969, p.247)

Lemert likewise argues

"The task of sociology is to study not the theoretical 'stuff' of delinquency but the process by which a variety of behaviours in context are given the unofficial and official meaning that is the basis for assigning a special status in society." (1967, p.24)

The focus of the labelling theorists, and the orienting bias of the sociology of deviance is to the forms of social reaction and the processing of deviance. Becker again argues that

"Social groups create deviance by making the rules whose infraction constitutes deviance From this point of view, deviance is not a quality of the act the person commits but rather a consequence of the application by others of rules or sanctions to an offender." (1963, p.9)

For that reason alone Becker and others are less concerned with the social or personal characteristics of offenders than with the process by which they came to be labelled outsiders. The logic of differentiation which was employed in early theories is seen as theoretically sterile since it depends on assumptions about deviance which ignore the very essence of the phenomenon itself - its essentially processual nature.

Thus the very notion of deviance itself is based on the pre-supposition of norms or social rules whose infraction evokes reactions which are in themselves influential in the development of a deviant character. Nor is this in theory a one-sided determinism (Gibbs 1966; Taylor, Walton and Young 1973) since the relationship between the rule violator and the agents of social control whether they be teachers, policemen or social workers is one of inter-action. It is the dialectic of social control and self that provide the basis for commitment to deviance since the concept of self maintained by the individual and his long-term behaviour may be modified as a

result of contact with the agents of social control. (Schur 1969; 1973) Whereas more traditional criminologists had conceived of delinquency or criminality as something that could be described and observed, in true empiricist fashion, the labelling theorists identified deviance as an ascribed status. Mead (1934) had argued for the importance of the symbolic environment in the construction and emergence of the self. Through the contact with significant others a particular construction of self emerged which was the product of the interaction and influential in the very socialisation of the individual. How we come to act and how we come to conceive of ourselves is then in part a function of how others act towards us and conceive of us.

The relevance of this for the study of deviance is that since the self is socially located, contact with systems of social control can in fact have a negative effect on the rule-breaker's self image. The alleged deviant may come to conceive of himself, and thereby alter his behaviour accordingly, in terms of the very reactions presented to him by the agents of social control. Farrington (1977) provides empirical evidence to the effect that the labelling process can itself lead to the likelihood of further delinquency. Even where the alleged delinquent has not committed the acts which have evoked a hostile reaction, such is the potency of social re-definition that it may still be powerful in promoting a negative self image. (Becker 1963; Taylor, Walton and Young 1973) The transformation of self or the renegotiating of identity is more readily accommodated within a framework which espouses a model of deviance as sequential or processual. The analysis of deviance in this respect has benefited from concepts employed in other sociological fields, especially those of career, career contingencies, and master and auxiliary traits. (See Goffman 1968; Hughes 1944; Lemert 1967)

Above we suggested that labelling theory does not focus exclusively on the societal reaction or definition. This was for the following reason. The labelling approach emphasises the importance of the social reaction in the development of a self image. (Erikson 1962) However, it does not entirely ignore the precipitating factors (Schur 1973), those factors which contributed to the committal of a deviant act in the first place. In this way rather

paradoxically, Schur (1969; 1973) and others (Lemert 1967) do not therefore deny the relevance of the types of factors postulated by the earlier criminologists but suggest that their importance has been rather overstated. We then have the anomalous position whereby deviant commitment can be, and theoretically has to be, explained in terms of the social reactions approach. The committal of initial acts of deviance, however, on which the social reaction is based are to be explained in a different way. This parallels Lemert's distinction between (i) primary deviation, the original causes of the deviant attributes which he suggests are polygenetic, i.e. they arise out of a variety of social, cultural, psychological and physiological factors. These have little influence on the transformation of self; and (ii) secondary deviation, by which he means 'a special class of socially defined responses which people make to problems created by the societal reaction to their deviance'. (1969) Importantly, secondary deviation refers to the person and his commitment to further deviance whereas primary deviation refers only to his acts and not to the reorganising of psychic structure. The influence of the social psychological assumptions of Mead is obvious.

Critical as were others of what he termed the 'crude sociological determinism of Becker and Erikson', the distinction made by Lemert was devised to confront two different research problems: how deviant behaviour originates and how deviant acts are symbolically attached to persons and the consequences that these have for future acts of deviance. The polygenetic factors, the subject of a very different methodological strategy are less important than adverse social reaction which as secondary deviation evokes deviance commitment. The potential that such an analysis has for research into deviance, or more correctly deviation, is in fact that deviance is a consequence of social control. (Schur 1973) Social control becomes the independent variable and though primary deviation cannot be explained in this way, secondary deviation can. And, in referring to the psychic structure of the deviant, Lemert is thereby explaining the nature of deviant commitment, a process attained by the realignment of self. In reference to the operation of the juvenile court, Lemert adds that

" we assume that deviation qualitatively changes in relation to the processing and to the impacts of the court and other agencies who take control over the child. Deviation becomes secondary in nature and in a real sense deviation begets deviation." (1970, p.59)

One of the implications of all this is that attempts to control deviance by extending the scope of social control may well have quite the opposite effect, either on individuals or on areas. In consequence, a more appropriate policy would be to restrict the sphere of social control in an attempt to reduce the potential for secondary deviation. It is such a proposal that Schur makes in suggesting radical non-intervention (1973) and Lemert in advocating judicious non-intervention (1970). The theoretical significance of the perspective as a whole, despite the misgivings that have been voiced (Gibbs 1966) was its relocation of the focus of criminology on the very nature of social control itself. As a result

"The issues of defining and enforcing the criminal law are now regarded as in themselves problematic, and not objectively given. There has been a resultant loss of clarity about the kinds of questions we can legitimately ask about crime and delinquency." (Downes and Rock 1971, p.351)

Nevertheless, social reaction theorists, and we include Lemert in this criticism, treat the question of the aetiology of initial deviance as subordinate to the processes of social reaction. Yet, though often referred to as 'transactionalism' or 'interactionist perspective' most of the discussions focus on social control and social reaction as determinants of deviance. Akers graphically epitomises the one-sidedness of the approach -

"One sometimes gets the impression from reading this literature that people go about minding their own business and then 'wham' - bad society comes along and slaps them with a stigmatised label. Forced into the role of deviant, the delinquent has little choice but to be deviant." (Akers 1967, p.46, quoted in Taylor, Walton and Young 1973, p.149)

This is a direct argument of a perspective in which not only is there little evidence empirically to support this contention that social control begets deviance, that deviation begets deviation, but one in which theoretical assumptions have not been clearly drawn. (Box 1971) These are criticisms that could also be made of more traditional approaches and which serve to identify the inability

of the social reaction approach to transcend the simplistic mechanistic explanations we have already discussed above. (See Mankoff 1971.) The social reaction theorists failed to achieve the dictates of what Matza termed the naturalist perspective in that despite statements to the contrary, they fail theoretically to offer deviants a choice in a framework which can be characterised as processual determinism.

To summarise the argument thus far, we suggest that the 'frames of relevance' employed by magistrates and panel members in the making of decisions about children who commit offences will be derived from the different 'available' ideologies of delinquency and delinquency control. We also hypothesise that there may possibly be a strain between the formal ideology upon which policy is based and the lay ideologies employed in its implementation. In the next section we shall trace in part the conceptual development of forms of juvenile justice. Our argument will be (i) that modifications in systems of delinquency control reflect a trend away from conceptions of delinquents as rational responsible beings who are liable to punishment; and (ii) that the debate as to whether children be best dealt with in a court or an administrative tribunal rests on the significance attached to considerations of fault or liability. In this way, our discussions above on responsibility and determinism become pertinent in so far as developments in delinquency control in particular and juvenile justice in general derive from a series of compromises between competing explanatory frameworks.

SECTION II

CONCEPTUAL AND HISTORICAL DEVELOPMENT
OF JUSTICE FOR CHILDREN

CHAPTER IV

JUVENILE JUSTICE:

CONCEPTUAL AND HISTORICAL DEVELOPMENTS

In earlier chapters of this thesis we have examined the nature of different, logically tenable perspectives that can be employed in the explanation of and the control of delinquency. Indeed we argued that there must in theory be a link between the explanatory framework and the favoured means of control. This holds true, as we argued, for both formal and informal modes of intervention. Prior to examining the results of the empirical study in which we sought to analyse the differences in the frames of relevance between magistrates and panel members, it is imperative that we consider the recent development of juvenile justice. In so doing the implications for formal policy of the different theoretical formulations thus far discussed can best be appreciated.

What we argued earlier is that the comparatively recent trend in the explanation of crime and delinquency was to reject the free will, classical conception of man in favour of more deterministic explanations. The intellectual revolution in social science (see Rusca 1973) had meant the reconceptualisation of man's behaviour as the product of causal antecedents. The significance of this for a discussion on social policy and delinquency is that in the context of juvenile justice the influence of positivistic conceptions of human nature is obvious in a number of important ways.

Perhaps one of the more important modifications to juvenile justice systems has been the gradual elimination of or erosion of the importance of personal responsibility. Wootton, in challenging the adequacy of criminal responsibility had argued that responsibility as a concept was a vague theological and metaphysical anachronism and that in practical terms it was difficult to establish responsibility or intent. What we find in relation to children is that the issue of responsibility has always been problematic since children by virtue of their age were not considered responsible to the extent that adults were. Early histories also reveal the fact that there was no agreement as to when a child or a person reached the age at which he could be

responsible. (See also Kean 1937.) With a lack of definitive criteria it is no surprise then to find that factors other than the age of the child were taken into consideration as

"age throughout played a small part for in these proceedings it was essentially physique that was regarded. (James 1962, p.131)

In England it was only in the seventeenth century that the 'age of discretion' became established at 14 by Hale, (see Kean 1937) following Coke, who emphasised the absolute disability of children who were seven and under. Between seven and fourteen, again the established guidelines, proof of malice resting with the prosecution, could render the child liable to harsh penalties. Though at common law the 'age of discretion' or of criminal responsibility was 7 with those from 7 - 14 presumed incapable of crime, the situation in Scotland was less precise. Morris and McIsaac (1978 p.160) for example suggest that

"according to Hume, the Scots had not attained the same degree of maturity and precision as England and he seems uncertain of the position of 7 - 14 year olds. MacDonald is quite clear however that the child over 7 had full responsibility."¹

Walker also advises us that in England, but not in Scotland, children between the age of criminal responsibility and their fourteenth birthday sometimes received protection from the rebuttable presumption that they are incapable of guilt. In Scotland, this was not the case. (1969 p.175. See also Sanders 1973 on this).

Despite the numerous changes and modifications in criminal law and procedure, as it applied to children, in later years, the guidelines of seven for absolute disability and fourteen for qualified disability remained unchanged until the Children and Young Persons Act of 1932. But even then, the only change was that the age of criminal responsibility was raised from seven to eight years of age, as it still is in Scotland despite the recent change. In the 1970s juvenile magistrates were still being advised about 'malice' and its implications for criminal behaviour by children. (Sanders 1973).

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1. The authors referred to in this quotation are Hume (The Baron), Commentaries on the Law of Scotland respecting Crimes. Edinburgh, Bell and Bradfute 1847; and Macdonald (J.H.A.), Walker (J) and Stevenson (D) eds., A practical treatise on the criminal law of Scotland, Edinburgh, Green 1948.

But as juvenile justice developed through time, the concept of responsibility had also been challenged with the expansion of the welfare and social services and the development of a philosophy of prevention. In this respect, what is important about the development of juvenile justice is that as considerations of welfare became paramount, the social services were seen to be an appropriate source of knowledge to inform the very measures of delinquency control. Once the positivistic logic had been accepted the debates about delinquency control and prevention began to focus on which causal analysis was appropriate. Formally, the logic of positivism, which underlay what is commonly referred to as the 'medical model' of delinquency provided the accepted paradigm of explanation and control; materially, however, there was no agreement as to which explanatory framework or 'available ideology' was the right one. Morris and McIsaac (1978, pp.50-51) commenting on a 'social welfare' approach in general state:

"... the medical analogy in fact breaks down, for while there still may be doubts in medicine about the causes of certain illnesses and uncertainty about their treatment, there is a far greater body of established knowledge than exists in criminological literature. There, little agreement exists at any precise level about the underlying reasons for delinquent behaviour and there is little evidence that known 'treatments' ... have any rehabilitative effect."

They then go on to argue that children may in fact need protection from a system based on welfare principles derived from shaky positivistic assumptions and that the most appropriate form of protection is afforded by the law. And with specific reference to the juvenile court it has been argued that the crucial issue was the correct balance of law and welfare in practice in the pursuit of individualised justice. (Yablonsky, 1962) What is obvious also in Yablonsky's work is that the problems of child offenders can not be resolved simply by a judicial, legalistic mode of intervention in which criminal responsibility is all important. Of equal importance is the necessity of ensuring that children get the help they need from individuals, in some cases before acts of delinquency have occurred, where competence is derived from familiarity with social science research.

"Ideally, usable social science theories and findings based upon hard research find their way into the operation of the juvenile court machinery, enabling the judge and his auxiliary services to implement recently developed therapeutic and diagnostic approaches." (Harno, 1951, p.427)

What is particularly interesting about the developments in Scotland following the 1968 Act and in England following the 1969 Act is that though they are premised upon a belief in a welfare or treatment philosophy and were accomplished in the context of social work re-organisation and rethinking, in both countries responsibility for decisions about children's welfare was allowed to rest with lay individuals. (That is, no professional body was granted ultimate responsibility for decisions about children's needs and welfare.) Thus, with specific reference to the institution of the system of Children's Hearings in Scotland, concern has been expressed both about the adequacy of the theoretical foundations of the system and the apparent paradox that despite the rather technical and morally neutral language of treatment preceding the 1968 Act, those responsible for deciding upon the welfare of children should be lay persons operating within few statutory restrictions. (Fox 1976, Asquith 1977.)

What now follows is an analysis of events heading up to the changes in juvenile justice that occurred in the late 1960s. Our argument is that the recent developments reflect a move away from what we characterised as a punishment non-treatment perspective (retributivism). Though some, such as Wootton (1959) sought to foster a non-punishment treatment approach to crime control, the solutions reached in the context of juvenile justice in both Scotland and England though influenced by treatment or welfare considerations were not exclusively so. Moreover, given that it is by no means a matter of universal agreement what the most appropriate form of explanatory framework is, it is important to note that changes in juvenile justice in the sixties, in both countries, were made in the context of widescale reorganisation and reconceptualisation of social work.

The Juvenile Court: 1908 onwards

There were two main movements in the development of juvenile justice since the turn of the century. The first was the gradual elimination of the distinction drawn between children who appeared in juvenile courts for having committed an offence and those who were in court for other reasons; offenders were increasingly

viewed as children who needed help, care or protection, and the measures for children who appeared in court for whatever reason became increasingly similar. The second movement was the continual modification of the juvenile court in recognition of the fact that the appearance of children in a court derived from a court of criminal law was less than desirable. Much of this chapter will be concerned to trace the early modifications this century in juvenile court procedure culminating in the radical difference that was to ensue between the Scottish and English systems.

Although much of the work of the juvenile court was with children who commit offences, the court also had jurisdiction over cases in which children were considered to be in need of some form of care or protection. (See Boss 1967; Midgley 1975; Cavenagh 1959). This civil function of the juvenile court has been influential not only in the development of measures to ensure that such children receive satisfactory standards of care, but also in that the measures available to the court in its criminal jurisdiction have been modified to ensure the welfare of the delinquent child may also be advanced. Under common law, the approach to child offenders was more clear cut. If the child were considered to be criminally liable he could be dealt with by any of the existing penal measures; if he were not considered so, the court had no authority to undertake any other form of action. Later modifications meant that the measures applied to children who were the subject of civil proceedings could also be applied to delinquents. But this meant that such similar treatment of the two categories of children was also undertaken after they had been dealt with by the court. Later we shall see that more recent changes in court procedure have extended civil proceedings to cover many cases that would formerly have been dealt with in criminal proceedings.

It is therefore relevant to consider the extension of the measures available to courts in their civil capacity and welfare policy in general in any attempt to examine the development of the juvenile court. With the continual redefinition of delinquency in more 'social' rather than simple 'legalistic' terms, such an enterprise

also has implications for the concept of criminal responsibility as it applies to the young, since the criteria for intervention under civil proceedings are the needs or interests of the child, not his criminal involvement per se. More fundamentally, the convergence of approaches for dealing with the delinquent and the deprived also raised important questions as to the appropriateness of the juvenile court as the agency for dealing with delinquency.

What is particularly important about the 1908¹ Children Act is that the jurisdiction over civil and criminal matters was assumed by the juvenile court. In the years that were to follow, the civil jurisdiction of the courts and the volume of work associated with it was to continue to increase. But the provisions of the act, despite the progress they made, were seen to be inadequate to offer children protection when it was most urgently needed. (Cavenagh 1967). On the recommendation of the Molony Committee,² the 1933³ Children and Young Persons Act extended the provisions made in the 1908 Act to include, in the concept of care and protection which had been officially stated for the first time, two other categories of children. The first was of those children and young persons who had no parents or guardians, or parents or guardians who were unfit to take care of them or who did not exercise proper guardianship. Where the court was satisfied that the children or young persons are falling into bad associations, or are exposed to moral danger or are beyond control, action could be taken.

The second was of those children or young persons under seventeen in respect of whom specified offences, such as cruelty or sexual offences, had been committed; or who were living in homes where such offences have been committed in respect of other children or young persons and the court was satisfied that they required special provision.

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1. The 1908 Children Act applied to England and Wales, and Scotland.
 2. Departmental Committee on the Treatment of Young Offenders, 1927, Cmd. 2831.
 3. This was followed in Scotland by the 1937 Children and Young Persons (Scotland Act).

Though the extension of the categories of children who came within the jurisdiction of the court anticipated later legislation, no provision had as yet been made for preventive action to be taken.

In 1945 in England, as a result of a number of incidents involving children in care, an interdepartmental committee⁴ was set up to examine the provision of care for children. The major focus for the criticisms contained in the committee's report was the delegation of responsibility for the deprived child to a number of different local authority departments.⁵ Similarly, the Clyde Committee⁶ in Scotland examined the problems of dealing with children in public care. Consequently the recommendation of both committees, mainly for the reorganisation of the administrative structure of the child care services into one local authority department, was implemented in the 1948 Children Act. The objectives of the new child care department were to

"..define and maintain standards of inspection advice and direction."

But once again it was recognised that, though the Act broadened the jurisdiction of the courts and the duties of the local authorities in respect of deprived children, there were many cases of children who could have been prevented from coming into care in the first place. (Watson 1965).

The documents which were most influential in establishing by legislation a preventive approach were the Ingleby and Kilbrandon Reports. Following on the recommendations of the Ingleby Committee, the 1963 Children and Young Persons Act granted specific powers to local authorities to undertake preventive work. The philosophy behind the Act was one of promoting the welfare of children by diminishing the need to receive them into the care of the local authority, and to prevent them as far as possible, from being brought before the

4. This resulted in the Report of the Care of Children Committee (Curtis Report) 1946. Cmnd. 6922.

5. The developments in juvenile justice that were to take place in Scotland and England and Wales in the sixties, were also to occur within the context of the reorganisation of local authority services and the later reorganisation of local government.

6. Report of the Committee on Homeless Children (Clyde Report) 1946. Cmnd.6911.

juvenile court.⁷

Section (2) of the Act also widened the definition of 'in need of care and protection' by including children under ten who under the 1933 Act might have been charged with an offence. There is thus an explicit statement as to the relevance of dealing with children who commit offences in a manner which was only applicable to non-delinquents in the 1933 and earlier acts.

In many respects, there was little to distinguish between what were thought to be appropriate measures for dealing with delinquents and those in need of care and protection, some commentators suggesting in fact that the only difference is the intention with which particular measures were proposed for children. (Jacobs 1971).

In the extension of the jurisdiction and measures available for dealing with children, the treatment of child offenders certainly developed along very different lines from that of adults. Indeed, Cavenagh argues that it is in the methods available to juvenile courts after the charge has been proved that most scope has been given for differentiating between adults and juveniles. (1967)

But the nature and form of court procedure had also come under attack and was progressively modified to meet what were seen to be the particular requirements of children processed through the courts. Two trends can be discerned. A form of court procedure was evolved that differed considerably from that experienced by adults. But significant differences existed between the civil and criminal procedures of the juvenile court. (Jacobs 1971)

The Juvenile Court: Constitution and Procedure

Common law had made no special provision for the modification of court procedure in relation to juvenile offenders who, under the common law principle of equality before the law had to

7. As Morris and McIsaac state, (1978 p.25/6), it would have been possible to extend the recommendations of Ingleby to the Scottish context or to realistically and fully implement the provisions of the 1937 Children and Young Persons (Scotland) Act which allowed for the institution of specialised courts. The momentous decision made by the then Secretary of State was the setting up of the Kilbrandon Committee, an event that was to result in radically different systems of juvenile justice in both countries.

undergo trial at a court of quarter sessions or assizes (see Boss 1967; Kean 1937) as did the adult offender. The system of juvenile courts, as statutorily constituted by the 1908 Children Act, embodies the recognition that young offenders need protection, not only from the severity of the penal measures applicable to adults but also from the rigidity and formality of criminal prosecution. Special courts had been established for children in America in Chicago in 1881 but there is considerable danger in drawing strict parallels between the English and American system of juvenile courts. Watson, for example (1965) advises us that the American courts were from the outset derived from the principles of chancery whereas the English equivalent was the product of progressive modification of the common law courts. The English juvenile court had been constituted as a criminal court and, like all criminal courts, its first duty was the protection of society, based on the premise '*salus populi suprema lex.*'

Though the 1908 Children Act had also applied to Scotland, developments in that country took a more fragmented turn (see the Kilbrandon Report, Chapter II). Four distinct types of court evolved for dealing with juveniles. These were the Sheriff Court, the Burgh (or Police) Courts, the Justice of the Peace Courts, and specially constituted J.P. Juvenile Courts. The J.P. Juvenile Courts were instituted by the Children and Young Persons (Scotland) Act 1937 but could be found in only four Scottish areas - Ayrshire, Renfrewshire, Fife and the City of Aberdeen (Kilbrandon para. 43). After the 1937 Act the assumption was that all juvenile cases would be heard summarily. Yet, it was by no means clear which court should hear the cases or which cases should be heard by which courts. For example, the especially constituted J.P. Courts were to have the same jurisdiction as the sheriff court in reference to children. Only the Lord Advocate however could order proceedings to be taken against children in the Sheriff Court or the High Court. Moreover, the very fact that not all juvenile courts dealt with offenders and those in need of care and protection is testimony to the lack of a uniform system in Scotland after the 1908 Children Act. As stated in the Kilbrandon report

"In Edinburgh, however, the Burgh Juvenile Court does not deal with truancy cases, or in Glasgow with care or protection proceedings, (including truancy cases)." (Para.46).

The system was characterised by the lack of uniformity.

The 1908 Children Act established summary courts which would deal exclusively with juveniles and the importance of this particular piece of legislation can be assessed by the fact^{that}/subsequent legislation in England and Wales has taken the form of introducing incremental modifications to the juvenile court system rather than fundamentally restructuring the very basis of juvenile justice. In this respect, the changes implemented in Scotland by the 1968 Social Work (Scotland) Act differ radically from the 1969 Children and Young Persons Act with the abolition of the juvenile court in favour of the system of Children's Hearings.

Further to protect the child from the exigencies of court appearance, various other amendments were made to the rules governing procedure in what were the ordinary courts of summary jurisdiction. Just as it was considered that the juvenile should not be subjected to the same procedure in court as the adult, so the 1908 Act made it obligatory for the juvenile courts

"to sit in different buildings or a different room from that in which the ordinary sittings of the court are held, or on different days or at different times."⁸

Restrictions were also later imposed on the reporting of proceedings in juvenile courts, though the Secretary of State could allow the release of such information if it were considered to be in the interests of justice. For similar reasons, restrictions were imposed on the number of people as well as on those who were actually allowed to attend. Though public, the juvenile court was by no means an open court.

Modifications in actual legal procedure have been inextricably linked to the expansion of the role played by the courts in relation to the neglected and deprived children. With the increasing commitment to having regard to the welfare of children, recognised initially in the 1908 Act by the delegation to the juvenile court of jurisdiction over matters civil as well as criminal, a number of changes epitomised the

8. It has been suggested that the separation of juveniles from adults at every stage in the criminal process is justified largely on the ground that a punitive and moralistic framework is inappropriate for children. (Wheeler, Bonaich, Cramer and Zola, 1968).

move towards a better understanding of children and their needs. These have been primarily in the very nature of court procedure itself but also, perhaps more importantly for the direction in which the juvenile court was to develop, in the availability of information on the child's social, environmental and background characteristics.

Because the juvenile court is a court of law, a child's case may be subject to the rules of evidence which govern the adjudication of the allegation. Obvious limitations on the capacity of the child to assimilate and appreciate the implications of what is going on around him have been graphically if somewhat humorously illustrated by Watson. (1965). Consequently, in order that a child may be offered a fair trial, which involves his understanding the processes of adjudication and sentence, a number of guidelines⁹ were prescribed whereby assistance can be given to a child to allow him the benefit of full protection of the law.

According to the act the language of the court had to be kept as simple as possible and not beyond the comprehension of the child. Should the child fail to comprehend any matter, the clerk of the court was enjoined to explain this to him. This has meant that, at least as far as the child and his parents may have been concerned, much of the legal jargon associated with a court of law has been eliminated from the juvenile court.

Furthermore, a child was given the benefit of full legal representation either to cross examine witnesses or to plead his case. Even in ordinary cases where children were not represented the magistrates were obliged, in the interests of justice, 'to attempt to redress the balance, even to the extent of seeming to be counsel for the defence.' (Watson 1965). The Ingleby report likewise commented (para.68) on the disadvantages for the child of a court procedure which, though less formal than that of the adult court may nevertheless have been too formal to be understood by children.

Similarly, the indirect consequences of an appearance in court and the stigma associated with such and with a conviction were recognised and by the 1933 Children and Young Persons Act the terms

9. Magistrates Court Rules 1952

'finding of guilt' and 'order upon such finding' were substituted for 'conviction' and 'sentence.'

Thus, though the criminal law had initially discriminated in important respects between the measures appropriate for adults and children, such discrimination had also emerged as regards the form of criminal procedure experienced by the adult and young offender.

Consonant with the greater emphasis on the welfare of the child, the need for social and background information on the basis of which appropriate welfare decisions could be made, was clearly appreciated soon after the 1908 Act.

As early as 1925, the Third Report of the Home Office Children's Department commented upon the dearth of satisfactory information about delinquents actually available to the courts. Two years later the Molony Committee had argued that it was

"....essential that the juvenile court, whose main function it is to consider the welfare of young persons who come before it and to prescribe appropriate treatment for them, should have, in all except trivial cases, the fullest information as to the young person's history, his home surroundings and circumstances, his career at school and his medical record." (paras. 34/35).

It is of course logical that, where decisions were to be influenced by welfare considerations, information pertinent to childrens' needs should be available to those responsible for making such decisions.

But a fundamental difference between the recommendations of the 1927 Committee and the 1933 Children and Young Persons Act in which they found legislative expression, was that whereas the committee argued that 'the main consideration of the court was to consider welfare', in the Act welfare was only stated to be a secondary consideration. Nevertheless, the 1933 Act made provision that

"...in every case, where a child or young person is brought before the court... it shall be the duty of the local authority to investigate and report to the court upon his home surroundings, school record, health and character." (Section 35(2)).

However, at the instance of the court such inquiries could be made by a probation officer though responsibility in such matters

lay initially with the local authorities. The practice of appointing probation officers in earlier years had not been generally adopted¹⁰ but at the time of the 1933 Act, the probation service, which by that time was more organised, was charged with the presentation of social inquiries on juveniles but also with the supervision of juvenile offenders. The close relationship which the probation service was to have with the juvenile courts is summed up in the following quotation:

"The magistrates however if they wish may make a general direction that inquiries about the home surroundings shall be made by their probation officers, in which case the Local Authorities shall be exempt." (Our emphasis)

The relationship of the local authorities to the court was conceived of as one of co-operation in so far as the measures imposed by the court were executed by the local authority departments who also provided necessary background information. But the probation service was unequivocally an element in the juvenile court network.

What we find then is that between the turn of the century and the sixties, the local authority and related services became important for the diagnosis, assessment and prevention of juvenile delinquency as the appropriateness of the juvenile court for dealing with such children was increasingly questioned. The gradual elision of the distinction between delinquents and non-delinquents that occurred after the 1908 Act was to anticipate important changes that were to occur later in the structural and administration organisation of juvenile justice as in the philosophy underlying the respective systems in England and Wales and Scotland. In short, the retributivist elements inherent in the juvenile court were to be challenged by arguments which derived from more utilitarian ways of thinking.

The Juvenile Court - A basic conflict

An important feature of the 1908 Children Act, quite apart from

10. See Departmental Committee on Training, Appointment and Payment of Probation Officers 1922.

the very fact of the establishment of separate courts for juveniles, was the assumption of jurisdiction over both civil and criminal matters. This was to have important implications for the later development of the juvenile court, which in terms of its two areas of jurisdiction, increasingly reflected the greater emphasis placed on the welfare of children who appeared before the court whether for having committed an offence or for some other reason. Consequently, delinquent and other children could be subjected to similar measures and committed to the same institutions. In particular, the 1933 Children and Young Persons Act - containing as it does the requirement to have regard to the welfare of the child - has been the source of much controversy about the nature and philosophy of the juvenile court. Wootton states in reference to the Act:

"Nevertheless, behind the clear and simple language of this statute there lurks a fundamental conflict which threatens to become the subject of acute controversy and perhaps to crack wide open the structure that has been so carefully built upon the foundations laid 53 years ago." (1961 p.678)

The conflict to which she refers is that contained within a system of juvenile justice whose principles are derived from criminal justice in its application to adults, and subject therefore to the rules of evidence and criminal procedure, but which at the same time is expressly required to have regard to the welfare of the children who are the subjects of decisions within it. This is of course the crucial dilemma of juvenile justice, and as such has been the focus of considerable comment within the literature. (See Elkin 1938). Cavenagh, for example, explicitly and concisely states the position of critics of the juvenile court:

"The practical difficulty in submitting child offenders to the criminal jurisdiction was, as they saw it, that the extent of a child's social need and the gravity of his offence were not necessarily in proportion to each other." (1967, p.65).

And later, commenting on the similarity of the proceedings for delinquent and non delinquent children she states that

"..the procedure for dealing with non-criminal cases is in many ways similar to that for trial on a criminal charge though no question of criminal responsibility is involved." (1967, p.89).

Nor had the apparent incongruity of adopting a welfare philosophy within a framework ultimately derived from the ordinary courts of criminal law escaped official notice. The incompatibility of a conceptual framework underlying notions of welfare and treatment on the one hand with the conceptual framework underlying notions of crime and punishment on the other received explicit comment in the Ingleby and the Kilbrandon Reports, the respective committees of which were obliged to examine the law in its application to children in England and Scotland, respectively.

Ingleby, in an oft quoted passage, commented thus:

"The court remains a criminal court in the sense that it is a magistrates' court, that it is principally concerned with trying offences, that its procedure is a modified form of ordinary criminal procedure and that, with a few special provisions, it is governed by the law of evidence in criminal cases. Yet the requirement to have regard to the welfare of the child, and the various ways in which the court may deal with an offender suggest a jurisdiction that is not criminal. It is not easy to see how these two principles may be reconciled...." (Ingleby report, para.60).

And in similar vein, though referring to the practical difficulty of implementing a preventive philosophy within the framework of the court, the Kilbrandon report argued that

"In drawing a contrast between a system resting primarily on ideas of crime, responsibility and punishment and one proceeding primarily on the principle of prevention, we are not, of course, suggesting that the methods of dealing with adult crime are entirely governed by the first concept or that a working compromise between them is not possible. In practice, the present arrangements represent such a compromise, and at any given time and certainly in relation to any individual offender, a balance has to be sought on an empirical basis between the conflicting claims of the two principles." (Kilbrandon Report, para.54).

The recommendations of the respective committees as to the future development of juvenile justice were seen as providing viable and, perhaps more importantly, acceptable solutions to the particular problem associated with the juvenile court. The recommendations themselves, as we shall later see, though derived from a common concern, were fundamentally different and are indicative of the two opposing standpoints which can be identified in the relevant literature. (See Cavenagh 1966).

One is based on the argument for the necessity of a judicial and legalistic mode of intervention in the lives of children, even where welfare is being considered, and hence the necessity of retaining the juvenile court structure and form of proceedings. The principle of welfare, it is important to note, was not itself questioned by the advocates of the juvenile court. Rather, the source of the controversy was the implementation of welfare measures in particular and a welfare philosophy in general within an institution bound by the legal, judicial concepts associated with a criminal jurisdiction. (See Elkin 1938 ; Cavenagh & Sparks 1965; Watson 1965 ; Pound 1946).

The other, in complete contrast, is based on the notion that an administrative tribunal or agency, without the trappings of the court of criminal jurisdiction, was more appropriate for dealing with children in terms of welfare. (See Wootton 1961, 1968; Midgley 1975; Napley 1968; Harno 1951). The form of proceedings within a court setting itself was considered an obstacle to the provision of appropriate welfare measures for children, whether they were offenders or not. (Wootton 1968). The form of proceedings associated with a criminal court required the establishment of guilt before sentence could be passed. The problem of the juvenile court, although it is not without significance for sentencing adult offenders, (see Duster 1970; Kilbrandon 1966 p.118) is seen to be that there were two more or less distinct stages in the sentencing process. The first, the adjudication of the allegation, was dictated by judicial or legal concepts and was subject to rules of evidence. The other was the disposition or disposal of the case at the sentencing stage where consideration of the appropriate welfare measures was founded theoretically at least, upon a conceptual framework which far from assuming, in criminal cases, rationality and personal responsibility, presupposed a conception of human nature as essentially determined. This has been presented as the dilemma of western penal systems. (Duster 1970).

Nor are the differences in the conceptual frameworks simply of philosophical interest; they are of considerable sociological significance in terms of the ideological orientations of the different agencies which comprise particular social-control networks.

The changes introduced by the 1969 and 1968 Acts respectively, for example, were made in the context of the reorganisation of the social services in the light of their expanding role in the field of delinquency as well as the redefinition of delinquency in terms of a different ideological orientation.

Though the procedure of trial for children had been modified in a number of ways from the proceedings in summary court, the juvenile court was nevertheless, and still is, a court of law. In this respect, the juvenile court in England in the early days of its history did not experience the conflict between a 'welfare' and a 'court' or 'judicial' philosophy to the same extent as did the early American courts. The modifications made to summary court procedure never quite allowed for the same degree of 'socialisation' (see Waite 1921; Midgley 1975) as its American counterpart. Despite the attempts to simplify procedure, commentators, some of whom were advocates of the juvenile courts, recognised that proceedings in the English juvenile court may still be confusing for a child. The degree of informality in the juvenile court moreover in its early development did not involve the loss of protection afforded by the principles of due process and though perhaps true of American juvenile justice before constitutionalist revision, (Waite 1921; Tappan 1946; Allen 1973; Van Waters 1922) it would not have been accurate to suggest of the English juvenile court that

"Emphasis upon legal rights of the accused, protection of the innocent, proof of guilt and sentence of punishment commensurate with offence was supplanted with a concern for determining the child's condition and prescribing and implementing a course of action aimed at relieving that condition and preventing its recurrence." (Faust and Brantingham 1974 p.145).

From the outset, where a child's welfare was in question, the decision as to measures appropriate to promoting welfare were only made after specific issues had been settled in accordance with the rules of evidence. (Tappan 1946; Faust and Brantingham 1974; Fox 1974).

As a court of criminal law, the English juvenile court in hearing cases was obliged to abide by the standards of legal procedure and only when guilt had been established, in offence cases, could the

child be dealt with, whether by measures of treatment or punishment. And even in its civil jurisdiction, such standards of legal procedure were also applicable where state intervention depended upon the establishment of matters of fact pertaining to the child's social, personal and environmental background. The establishment of specific allegations prior to state intervention had been seen as basic to a philosophy of juvenile justice implemented within a court setting:

"The so-called 'problem' is basic to the judicial procedure, whether civil or criminal. It is that specific allegations must be made and proved before a person can be subjected to compulsion on account of them, and the weight of the order is traditionally likely to be apportioned by the court to the gravity of the acts or situations established. (Cavenagh 1966 p.127).

The concentration on specific allegations offers a means whereby protection can be afforded to the defendant from undue intervention and interference with his liberty. Even where welfare measures are being considered, this does not preclude the need for children to be afforded protection. (Elkin 1938; Cavenagh 1966 ; Midgley 1975). Again, it is not the principle of welfare as much as undue interference with individual, in this case children's, rights and liberty which underpins the argument for the retention of the juvenile court.

Such arguments had been made as early as 1927 in the Moloney Report.¹¹ Though it had considered the question of possible preventive measures to further the welfare of children, the committee were unable to recommend the abolition of the juvenile courts. One reason for this was that, since they were courts of justice, juveniles who appeared before them were given the opportunity to meet specific allegations made. The more recent criticism expressed over the nature of the American juvenile court (Tappan 1974; Faust and Brantingham 1974) was based on similar foundations and was of no little significance for the constitutionalist revision of juvenile justice in the United States. This is perhaps best epitomised by *In re Gault*. (See Faust and Brantingham 1974 p.360 ff).

11. Moloney Committee (1927) Report of the Committee on the Treatment of Young Offenders (Cmnd. 2831), London: HMSO.

The Moloney committee had further argued, in support of the retention of the juvenile courts, that alternative forms of proceedings, as had been created in New Zealand only two years prior to the report, did not allow sufficient attention to be paid to the offence which had occasioned the charge in the first place. (See Midgley 1975). Moreover, in recognition of the principle that welfare is not the sole consideration for courts of law, where offences were serious this had to be brought home to the offender; the court appearance itself was valued as having a deterrent effect. The 'formalism' of the juvenile court (Midgley 1975, p.29) in its application of established standards of judicial procedure safeguarded the rights of the child and protected him from undue intervention; the nature of the court proceedings themselves, and not only the actual measures available to the court, were also seen to have a salutary effect on the offender, and to be of possible general deterrent value. Though originally voiced in the 1920s, such arguments can also be seen in later government reports (see Ingleby 1960).

The reluctance of the 1927 committee to introduce radical changes in juvenile justice in favour of more incremental modifications to the proceedings and jurisdiction of the juvenile court, has been a characteristic feature of policy statements, at least as far as England is concerned, up to the present day. Proposals for incremental changes had also been made by Clarke Hall who envisaged a system of juvenile justice in which all children would be dealt with in terms of guardianship (1926). This did not mean that the rules of evidence would not have applied, but rather that the process of deciding whether there were sufficient grounds to intervene in a child's life would be made by a court operating within its civil jurisdiction, irrespective of whether the child was an offender or had appeared in court for other reasons. The judgment of questions of fact, pertaining to the child's needs and not simply to offence allegations, remained under this approach an appropriate task for judicial investigation. Even in terms of civil jurisdiction, the principles of due process would still be available to the child and his parents. The attraction of such an approach to dealing with children is indicated by the fact that any changes actually implemented since then have been of the

nature of raising the age of criminal responsibility and dealing with child offenders more in terms of civil than criminal proceedings. Watson, himself an advocate of the juvenile court, had also taken the stance that any changes introduced in the formal institution for dealing with children should be within the framework of the juvenile court. (1970).

The Ingleby committee had also been unable to recommend the abolition of the juvenile court though it did recognise the weaknesses, thereby creating a dilemma as to the nature of any proposals it may have made. (Boss 1967). One of the arguments given in the report for the retention of the juvenile courts had been that the courts 'were generally of good standing and worked well on the whole.' (Para.70). The changes recommended were again essentially of a procedural nature and were designed in recognition of the unsuitability of dealing with children especially younger children, by means of criminal jurisdiction. Though the juvenile courts were to be retained, it was recommended that efforts should be made to get away from the conceptions of criminal jurisdiction, (1960 para.77) a proposal not dissimilar to that made by Clarke Hall, and later by Wootton. (1959). Nevertheless, the Report could not support the total abolition of the juvenile court which had objectives and considerations other than welfare alone to bear in mind.

"Although it may be right for the court's action to be determined primarily by the needs of the particular child before it, the court cannot entirely disregard other considerations such as the need to deter potential offenders. An element of general deterrence must enter into many of the court's decisions and this must make the distinction between treatment and punishment even more difficult to draw." (1960 para.7).

The solutions proposed were again indicative of the fact that it was not the principle of welfare per se which was objectionable so much as the proceedings which surrounded welfare considerations in decision-making. Decisions about children were still to be welfare oriented but the proceedings were to be further modified so as to allow younger children to be dealt with by the court in its civil jurisdiction.

All children who appeared before the court and who were under

12 were to be dealt with as in need of care, protection and control. (Para.84). Because the court was to inquire into all circumstances surrounding court appearance, mother and father of the child were to be required to appear. But even before proceedings were instituted, police and local authority personnel were to consult as to the necessity of court appearance. (Para.84). Ingleby had accepted the comments of those who opposed the retention of the courts on the grounds that the child would thereby be stigmatised. (Para.68). The notion of stigma and 'stigma theory' were to occupy a central role in the later, post Ingleby, proposals for juvenile justice.

Children between 12 and 17 were to continue to appear before courts under the then existing procedure; they were to be dealt with as offenders responsible in law for their own actions, or as in need of protection or discipline, subject in all cases to S.44 of the 1933 Act. (Para.105). Perhaps a development of a more fundamental nature was the recommendation (para.94) that the *doli incapax* rule should be abolished. The difficulty of establishing guilty intention generally, but particularly in children, it was agreed, meant that the criminal law was thereby administered inconsistently. More importantly, the *doli incapax* principle could in fact prevent children from getting help they needed where it had been proven that they had not known what they were doing. (Para.94). The 'knowledge of wrong' test, particularly since the implementation of S.44 of the 1933 Act was considered as inhibiting the application not of punitive measures, but of welfare measures. (Williams 1954). Wootton also felt that

"..in short, if the welfare, not the punishment of the child is the governing consideration, the safeguards of the criminal trial became irrelevant;

and

"..as I have tried to point out, these safeguards are inextricably related to a punitive judicial process. It is only because the approved school, the probation or supervision order and the attendance centre are inherently penal institutions, because they are places of punishment the road to which lies through the courts, that a specially elaborate procedure is necessary. Substitute an educational for a penal role and the need for that procedure will disappear." (1961 p.675).

However, the Ingleby committee had not recommended the fundamental substitution of philosophies for dealing with children, especially those who commit offences. Rather, the changes which it recommended concentrated on the issue of responsibility and its implication for the suitability of different types of proceedings. The inflexibility of the common law had meant that where *doli incapax* had not been established, a child could not receive any necessary help or treatment. What makes the principle particularly difficult to apply is that children who are between the ages of 18 and 14 (following the 1932 Act the age of criminal responsibility was set at 8) are

"..morally responsible not as a class but as individuals when they know their act to be wrong. Only then do they morally deserve punishment.." (Williams 1954 p.497).

Court proceedings at the stage of adjudication in offence cases were determined by judicial and legal notions such as *doli incapax* and responsibility, whereas the sentencing stage where welfare was considered operated in terms of a different conceptual framework. The Ingleby solution to the dilemma was further to alter the proceedings and not abandon the welfare ethic, so that decisions as to welfare in cases involving younger children would logically follow from a form of court procedure whose guiding precepts were not antithetical to those governing welfare. Welfare measures, it was hoped, would not then be imposed on children in whom had been created expectations of 'just deserts' by means of the court proceedings. What are particularly interesting are the assumptions about delinquency causation underlying the main recommendations of the report.

The responsibility for crime by juveniles was considered to be shared by the child and 'those responsible for his upbringing.' Amongst 'those responsible' were parents, family, school and the community and the child could therefore himself only be held partly responsible for his behaviour. (Ingleby viewed the family particularly as a potent source of delinquency.)

Nevertheless, in later years children had to accept greater responsibility for their behaviour, presumably until they had attained the status of normal, fully responsible, law-abiding citizens.

The influence of such assumptions in the recommendations of the committee has been remarked upon by Bottoms.

"In other words, the model was, in crude terms, one of social pathology for the younger child, but more classical assumptions about choice of evil for the older child; and these models were to be reflected in the differing procedures - civil proceedings for the younger child and criminal for the older." (Bottoms 1974 p.324).

The resolution of the dilemma of the juvenile court was in effect

"..to inject the pathological model in to the whole of court proceedings for younger children, and for older children to reduce the force of the conflict by stressing moral responsibility for crime and thus minimise the pathological model at the sentencing stage." (Bottoms 1974 p.342).

Despite the apparent neatness of such a proposal, the ideological conflict between a welfare and a punitive orientation could not be completely resolved where considerations of welfare are, theoretically at least, to be given to all cases. Indeed, the imposition of a rehabilitative ideal on a court based approach to dealing with adult offenders has presented just such problems.

Though the report was considered by some to have been ineffectual and unimaginative (Midgley 1975), the committee's recommendations themselves did not receive complete legislative expression. With the 1963 Children and Young Persons Act, the age of criminal responsibility was certainly raised but only to ten; the jurisdiction of the court over care and protection cases were modified to care, protection and control. Other than these changes, the only condition of major importance in the 1963 Act was the provision for preventive powers to be exercised by local authorities.

Whereas the Ingleby report may well have been rather conservative in its recommendations, the more radical proposals made in England in the 1960s aroused considerable hostile reactions, with the result that the incremental and evolutionary, rather than revolutionary, character of the development of juvenile justice south of the border was continued.

Post Ingleby Developments

The rather conservative approach to change in juvenile justice proposed in the Ingleby report did little to stem the demands for more radical reform. Wootton, a prominent commentator throughout this period, summed up the reaction of many to the report when she said:

"We had been hoping for a bold and imaginative reconstruction of the whole system for dealing with unfortunate children in this day and age. What we got was a number of useful technical minor reforms on a system which in the judgment of many of us is already outmoded." (Hansard H.L. 1962 CCXLIV. 815).

The report also received criticism in a Fabian pamphlet devoted to commentary on the Ingleby proposals. (Donnison et al. 1962). The main thrust of the criticisms was twofold. Though Ingleby had identified the family as a major source of delinquency, as had other reports previously, (see Kahan 1966) it was felt that little had actually been done to provide a service which would truly be designed to alleviate family need. (Jay 1962). Moreover, though the report had also recognised inherent weaknesses in the juvenile court system and the problem of the stigma associated with court appearance, the report had in fact not taken sufficient steps to keep children out of the court. These were issues that were to be firmly taken up in the Longford Report.¹²

Though the Longford Committee had been established to consider the prevention of crime and the improvement and modernisation of penal practice as a whole, a substantial part of the report was in fact devoted to problems associated with juvenile delinquency. In response to thinking which had expressed concern at the absence of any effective 'family' service (see Jay 1962) and at the stigmatisation of children who appeared before court, the committee recommended

"..the establishment of a family service with the aim of helping every family to provide for its children the careful nurture and attention to individual social needs that the fortunate majority already enjoy, and, secondly, changes in judicial procedure which will take children of school age out of the range of the criminal courts and the penal system and treat their problems in a family setting.

12. Crime: A Challenge to Us All. 1964.

Once again we find that not only is there a shift in orientation to the problem of dealing with children but that the implications of changing philosophies are reflected in the recommendation for the reorganisation of the services hitherto responsible for the presentation of information about children to the courts and for the execution of court orders. ~~And because of the importance of a~~ "family" service, which in terms of the report would be responsible for the very diagnosis of problems experienced by children as well as for decisions as to appropriate measures of treatment, this meant that both functions would be carried out mainly by social workers. This would have necessitated a considerable expansion in the role of such services and the Report anticipated further developments in this direction.

Like the Curtis Report¹³ the Longford Committee represented the integration of fragmented local authority services as desirable in that there would be overall planning with a more efficient use of skilled manpower. The concept of a 'family' orientated service itself also provided the foundation for change in dealing with delinquents with the proposal for a non-judicial agency to determine appropriate welfare measures. The proposal to remove all children of compulsory school age from the ambit of the criminal law was not new, though the Longford report gave it official backing. But the proposals involving the creation of a family service by each local authority did not completely do away with the court. A 'family' court, which was to be a judicial agency, was to deal with cases where the family service could reach no agreement. It also would have responsibility for other than simply children's cases. Cases of 'serious' delinquency could also be referred to the 'family' court directly by the family service or the police and this exemplifies the difficulty of accommodating children who commit offences within a system based completely on a welfare ethic, with its underlying assumptions of pathology. (Kilbrandon 1964, Morris 1974).

The logic behind the proposals was that of the unsuitability of the juvenile court for dealing with children, none of whom in early adolescence ought to be subjected to criminal proceedings. The measures applicable to children of compulsory school age who

13. The Report of the Committee on Care of Children (Curtis) Cmnd. 6922, 1946.

had not been involved in offending were considered appropriate for those who had been so involved; consequently, the form of proceedings for such children, who were in no essential respects different from other children, should similarly be of a non-judicial nature. The Longford proposals were incorporated within the abortive white paper, The Child, The Family and the Young Offenders,¹⁴ which contained the government's

"..provisional proposals for practical reforms to support the family, to forestall and reduce delinquency and to revise the law and practice relating to offenders up to 21. (p.3).

An addition made within the recommendations of the white paper was that a 'family council' should be appointed whose function would be to hear cases and, through the family service, to be responsible also for the execution of measures decided upon. It was to deal with all cases of delinquency, care, protection and control and was to work as far as possible in consultation with and with the agreement of the parents. And though the family council was to be a non-judicial body, as with Kilbrandon, the white paper did not propose to dispense completely with the court since the child's right to protest his innocence was preserved. (See Jacobs 1971; Elkin 1938; Cavenagh 1967 on this point.)

The arguments that had been mentioned in the Longford report, pertaining to stigma and a family service, were supplemented by others. Firstly, the task of the courts had become one mainly of making decisions about appropriate measures, as the majority of children who appeared before the court did not dispute the facts of the allegation. Again, this was similar to an argument made by Kilbrandon and it is difficult to believe that the Scottish report was of no significance in influencing developments in England. Secondly, and related to all this, treatment measures were to be imposed in the form of court orders and were thereby not flexible enough for the implementation of a welfare philosophy. The purposes behind the white paper were to remove children from the jurisdiction of the criminal law and to separate as far as possible arrangements for the trial from the process of making decisions as to appropriate measures for children.

14. Cmd. 2742, 1965

Perhaps not unexpectedly in view of the radical nature of the proposals, the magistracy, lawyers and probation service were hostile to such developments. The main focus of criticism was the fact that cases were to be heard by a non-judicial body, composed mainly of child care and other local authority social workers.

In reference to the argument that facts were not disputed in the majority of cases, Cavenagh argued that both the white paper and the Kilbrandon report were mistaken in their assessment of judicial procedure in this respect.

"Both wrongly assume that therefore the criminal court has no real function to perform in such cases. But the criminal jurisdiction protects the liberties of the offender not only by requiring proof of offence before liability to compulsion but by limiting the exercise of compulsory powers over a convicted offender." (1966 p.128).

The delegation of responsibility for investigation of cases involving young offenders to non-judicial bodies was considered fraught with problems, and was an unwarranted shift from the concepts of crime, responsibility and punishment to a concept of treatment based wholly on the needs of the offender. Yet such a shift necessarily rendered the judicial protection of children inappropriate, given that the framework of intervention was to be based on welfare or need. The shift in the philosophical basis would also have involved, it was argued, an unnecessary revolution in English juvenile justice.

"Juvenile delinquency is not a new problem. The criminal law has been dealing with it just as long as it has been dealing with adult crime. A system of such antiquity is unlikely to be fundamentally unsound..." (1966, p.133)

Again the principle of welfare itself may well have been acceptable but what was not acceptable was the complete abolition of the juvenile courts whose functions were not solely restricted to dealing with considerations of welfare. The danger of too radical a shift in philosophy was to concentrate too much on the welfare of children at the cost of other objectives.

"Dealing with breaches of the criminal law appears to be the proper responsibility for the judiciary. After

all the child and his parents are not solely involved; the public also has an interest in the administration of the law." (1966, p.133)

Though approval had been voiced by some at the attempt to remove children from the courts (Scott 1966), others were doubtful as to the 'efficacy' of such proposals in dealing with juvenile crime (Cavenagh 1966, Cavenagh and Sparks 1965) and also as to the ability of the family councils to be any more successful at producing a consistent policy of decision-making than had been the magistracy. (Patchet and McLean 1965 p.699 ff).

That the family councils were to have been composed of local authority social workers was an obvious focus of criticism by members of the probation service. Though probation work was based on the same ideological orientation as that of other branches of social work, the probation service was an integral element in the court network. Whereas social work was local authority based, probation work was conducted within the framework of the courts and the service was independent of the local authorities. Probation officers, in view of the apparent success of probation work (see Jarvis 1966) were unable to accept the merits of the proposal that a new body of social workers given responsibility for a field in which they had been traditionally involved and in whose development they had been influential. Members of the service also emphasised that judicial intervention as opposed to decision making by non-judicial bodies was necessary as a means of protecting the defendant.

Conversely, at a time when there were increased demands for the professionalisation and unification of social work, the proposals contained in the Longford report and in the white paper were not unacceptable to the members of the various local authority and other social services. (Kahan 1966).

But the dominant criticism of the proposals was against the removal of the child from the jurisdiction of the criminal law and the abolition of the juvenile courts in favour of a more administrative approach to delinquency control. What must have undoubtedly offered support to such criticisms was the developments at that time in America, where the trend in the 1960s was to a more formal process of intervention. By the beginnings of the 1960s

the problems associated with the scope of discretionary decision-making in the juvenile court in the United States had been recognised with the result that there followed a number of changes in juvenile justice which introduced a more formalistic approach to decision-making based on the principles of due process. (See Faust and Brantingham 1974).

The proposals in the English White Paper were then defeated and the government were forced to think again.

Though the recommendations in The Child, The Family and The Young Offender met with widespread disapproval, a White Paper produced only three years later was incorporated into The 1969 Children and Young Persons Bill with only minor modification. The proposals in the 1968 White Paper, Children in Trouble, were made within the context of the juvenile court framework and it is the retention of the juvenile courts that has been seen as giving respectability and acceptability to the recommendations. The later proposals in this way did not pose such a threat to

"the ancient principle that no subject of the Crown, however young or undistinguished may be deprived of his liberty except by order of a properly constituted court of law." (Watson 1970, p.IX)

Whereas the two White Papers differed in their intentions towards the juvenile courts, the less radical Children in Trouble nevertheless made recommendations which were influenced by the recommendations of the earlier paper. In particular, the move to keep children out of court as far as possible was still predominant, though the 1968 recommendations sought to achieve this without the abolition of the juvenile courts. Similarly, both papers recognised the need for the reorganisation of the social services as a prerequisite to the provision of adequate measures for children, whether offenders or not. Such a trend was welcomed by Wootton who stated

"I submit that up to compulsory school leaving age every child should be treated in an educational and not a penal atmosphere and should not be liable to any penal proceedings whatsoever." (1965, p.29 ff.)

The nature of the 1968 proposals was to allocate to informal consultation between the different agencies within the social control

network, the functions that would have been carried out by the 'family councils.' The nature of intervention was therefore either to be through court proceedings or informal, voluntary contact with the social services department.

The White Paper had proposed new legal procedures in relation to juvenile offenders over the age of 10 which was to remain as the age of criminal responsibility, below which children, as before, would not be subject to criminal proceedings. In relation to offenders aged 10 and under 14, however, an offence was no longer to be a sufficient ground in itself for bringing children before the court. Where proceedings were to be necessary, they were to be brought under care, protection or control procedure, and where a child had been involved in an offence, it had to be established that he had committed the offence and that he was 'not receiving such care, protection and guidance as a good parent may reasonably be expected to give.' There was then a double-tier requirement whereby it had to be shown that a child was in need of care and that one of the other conditions, one of which was the commission of an offence, was satisfied. But even before proceedings were instituted, the local authority and the police had to consult as to the necessity of such a step.

The prosecution of children between 14 and 17 was also restricted and except on a charge of homicide, would only be possible on the authority of a summons or warrant issued by a magistrate, a proposal that did not meet with universal approval.

In terms of the measures for offenders, the 1968 White Paper was no less committed to treatment and welfare than the earlier paper had been, and it made a number of modifications that had important implications for the increased role of the social services. Firstly, the approved school order was to be abolished for it was to be substituted by an order committing children to the care of the local authority. Secondly, provision was to be made for a new form of treatment, intermediate treatment, which was to be developed as neither a community nor a residentially-based programme, but which was to fall somewhere between the two. Thirdly all supervision of children under 14 was to be by the local authority

social services. This last proposal did not meet with the approval of a departmental committee which reported in the same year.

The 1965 White Paper, as we have noted, urged examination of the local-authority social services, as the reform of the law in relation to children highlighted the need for organisationally improved services to offer help to the family and to prevent delinquency. Accordingly, in the same year, the Seebohm Committee¹⁵ was set up to 'review the organisation and responsibilities of the local authority personal social services and to consider what changes are desirable to ensure an effective family service.'

Whereas, perhaps not unexpectedly, the Seebohm Committee welcomed the main recommendations of Children in Trouble, it nevertheless differed in a number of ways from the White Paper.

The Seebohm report dealt with the shortcomings of the then existing social services, namely the inadequacy in the level, range and quality of provision, and (as a consequence of the fragmented nature of the local authority social services), the lack of co-ordination which contributed to the difficulty of access to the appropriate services. The major recommendation of the committee was that a new local authority department be set up which would include the various services that had hitherto existed. These included the children's department, welfare departments, mental health services and educational services. What in effect was proposed was an organisational restructuring of different local authority services which complemented the drive towards the unification of social work as a profession and the acceptance of the concept of generic social work. (See Sinfield 1970)

The influence of the social work profession on the 1968 White Paper is displayed by the shift in orientation away from the assumption about social pathology, made in the Ingleby Report and the 1965 White Paper. Children in Trouble had also recognised the importance of the family as a potential source of delinquency but it placed greater emphasis on individual pathology.

15. Report of the Committee on Local Authority and Allied Social Services. (Seebohm) Cmnd. 3703. 1968.

"A child's behaviour is influenced by genetic, emotional and intellectual factors, his maturity, and his family, school, neighbourhood and wider social setting." (para.6.)

Whereas factors other than those of an individual nature were cited, the proposals for treatment measures concentrated on the child. This was also apparent in the Seebohm report where it was suggested that the diagnosis, assessment and treatment of delinquency could only be improved with the restructuring of the social services. Even though the juvenile courts were to be retained the social services were to play a central role in the diagnosing and treatment of delinquency which was construed in terms rather of pathology and its social ramifications than in terms of legal definitions and implications. Indeed, the retention of the juvenile court may have deflected the attention of the magistracy and the legal profession from the fact that the involvement of the social services was only minimally less than that proposed under the 1965 White Paper. The fact that the approved school order was abolished meant that with the care order, the decisions as to appropriate measures were to be made by the local authority. The decision by the magistrates, as was well appreciated later (Bottoms 1974 p.335), was to commit children to the care of the local authority, not to determine what the particular measures of care would be. That was for social work judgment and

"magistrates had failed to realise how far the traditional functions of the juvenile court were being eroded." (Bottoms 1974, p.335)

Whereas the 1968 White Paper had envisaged a divided responsibility between the social services and the probation service, Seebohm disagreed and recommended that all children and young persons under 17 be supervised by the social services department alone. Once again a government document was proposing to diminish the responsibility of the probation service in the field of delinquency.

Three principles then had been stated in the 1968 White Paper which with minor modifications became the basis for the 1969 Children and Young Persons Act. Firstly, children were to be offered treatment

rather than punishment with the distinction between delinquents and non-delinquents being further elided. Secondly, treatment was to be flexible with the introduction of intermediate treatment and the integration of all residential institutions into a system of community homes, a proposal that had been made earlier. Finally, there was to be participation of all concerned with the welfare of children, which was also to include the parents of children involved, and which would allow more children to be kept out of court by being dealt with other than by formal proceedings. In this respect the interdependence of the proposals made in the 1968 White Paper and the Seebom report with the necessary reorganisation of social service provision both in practice and in concept had been anticipated in Scotland within the Kilbrandon Report itself.

Scotland: The Kilbrandon Report¹⁶

Prior to the 1968 Social Work (Scotland) Act, there had in effect, as we have seen, been no uniform system of juvenile justice in Scotland. Though the 1908 Children Act establishing juvenile courts had applied to both England and Scotland, the evolution of juvenile justice thereafter took a very different form.

The 1908 Act had made legislative provision for juvenile courts to meet at different times and in places dissociated from the system of criminal justice as it applied to adults. But when the Morton committee,¹⁷ - appointed in 1925 to examine the treatment of young offenders and young people requiring care or protection - reported it emphasised the fact that juvenile cases were at that time still being heard in Sheriff courts or the Burgh courts. Only in Lanarkshire were the juvenile courts, attached to the justice

16. In contrast to the availability of literature relating to juvenile justice in England, there has been until recently, comparatively less written about the Scottish context. The Kilbrandon report itself contains only a brief history of the juvenile courts in Scotland.

17. Report of the Departmental Committee on Protection and Training (Scotland). London H.M.S.O. 1928.
49 - 192.

of the peace courts, operating as intended. The committee also referred critically to the lack of personnel qualified in dealing with children as neither lay magistrates nor legally qualified sheriffs were considered appropriate for the task. Consequently, the report had recommended that cases involving children and young offenders should be referred to specially constituted Justice of the Peace courts. The members of such courts were to be drawn from a panel of justices selected by virtue of their knowledge and experience in dealing with juveniles. The committee further recommended that the age of criminal responsibility be raised from seven to eight.

The recommendations of the Morton committee were embodied in the 1932 Children and Young Persons (Scotland) Act, later consolidated by the 1937 Children and Young Persons (Scotland) Act, and as with the 1933 Act in England, the magistracy were enjoined to have regard to the welfare of the child.

Nevertheless when the Kilbrandon committee was appointed in 1961 to

"consider the provisions of the law of Scotland relating to the treatment of juvenile delinquents and juveniles in need of care and protection or beyond parental control, and, in particular, the constitution, powers and procedure of the courts dealing with such juveniles.."

only in four areas were the specially constituted justice of the peace juvenile courts established. (These were Ayrshire, Fife, Renfrewshire and the City of Aberdeen.) Before the 1968 Act there were then four different types of courts dealing with juvenile offenders. These were the Sheriff court, the Burgh or Police court, the Justice of the Peace courts and the specially constituted courts. (See the Kilbrandon Report paras. 43 - 46).

Whereas the Sheriff court was presided over by a single, legally qualified judge, the Burgh or Police courts were presided over by a single baillie who held the office as an elected town councillor and was appointed by election by his colleagues. Lay justices sat in the J.P. courts; in the specially constituted courts, the panel of justices were appointed from their own number.

Moreover, the three different Police courts in Glasgow which sat as courts of summary jurisdiction for adult cases also sat as juvenile courts. Of these, the Central court was presided over by a legally qualified stipendiary magistrate with a full time appointment whereas the other two, the Marine and Govan Police courts were presided over by baillies.

The object in presenting such a catalogue is not simply to give a description of the provisions for children in Scotland but to highlight the lack of uniformity in the courts which had jurisdiction over juvenile cases in different parts of Scotland. In addition, as Kilbrandon points out, the choice of court for the hearing of a case could be affected by various considerations. (See paras. 43 - 46).

What had evolved in Scotland was a system of juvenile justice which unlike that of England and Wales, lacked any coherence or uniformity, a factor which must surely have contributed to the acceptance of the radical recommendations made by the Kilbrandon Committee (See Bottoms 1974; Morris 1974). It was against such a background that the Committee reported and recommended that the existing means of dealing with children were unsuitable and be replaced by a new system of Children's Hearings. However, it was not simply the organisational and administrative incoherence in Scottish juvenile justice which prompted such proposals - rather, the Kilbrandon Committee too had criticised an approach to dealing with children in terms of welfare within a framework of criminal jurisdiction.

Increasing delinquency rates, though treated with caution by the Kilbrandon Committee, were attributed in part to the inadequacy of the available means of dealing with delinquents. The particular form of social control in Scotland was treated as an independent variable in delinquency causation.

The solution to the problem of juvenile delinquency was not simply to modify the existing court arrangements which had fostered such general dissatisfaction, but to make wholesale changes in the very organisational and administrative structure of juvenile justice. Fundamental, not incremental change was proposed.

What was to follow in the report was a more concise appreciation of issues essentially similar to those tackled in the Ingleby Report, the disjunction between the two stages of adjudication and sentencing being given particular examination and analysis. It is also possible in the report to recognise issues and arguments that were to appear later in the major reports and White Papers in England. Kilbrandon, in particular, had argued that the ineffectiveness of the existing arrangements for combating delinquency could be attributed in part to the lack of co-ordination amongst the welfare services as well as to the inappropriateness of the attempt to implement a welfare philosophy within a court based agency. Neither was equipped realistically to implement welfare principles. It was the proposed solution to the 'dilemma of the juvenile court' that was to lead to a fundamentally different model of juvenile justice in Scotland from that in England. This was despite the fact that the underlying philosophies were essentially the same. (May 1971).

In reference to criminal procedure, though modifications had been made for children, the report stated that

"Criminal procedure....is clearly well adapted to determination of questions of fact, from which the accused's guilt or innocence may be inferred... In relation to juvenile offenders, however, statute law introduces a further set of considerations. A court in dealing with a juvenile is required to have regard to the welfare of the person before it. 'Welfare' is of course, irrelevant to the question of determination of innocence or guilt and relates to the second stage of the proceedings, namely, the form of treatment appropriate to the case once the facts have been established." (Para. 50).

These two functions rested on a framework of concepts that were fundamentally different from each other. Whereas the adjudication of the allegation issue assumes a high degree of personal

responsibility and focus on a specific act, an offence; welfare considerations were not based on an assumption of responsibility and welfare measures are determined by rather broader factors. Where the measures available to a court had been determined by a retributive or deterrent philosophy, then such punitive measures as would follow upon adjudication could well be influenced by the questions relating to the degree of responsibility. The conceptual frameworks underlying adjudication and punishment are essentially similar.

The committee were not solely concerned at the incompatibility of a crime - and - responsibility - and - punishment philosophy with a treatment philosophy that was 'curative' in nature. Rather, the crime - responsibility - punishment approach militated against the principle of prevention (paras. 52 - 3), by the necessity of establishing a specific offence or act, a point considered by Cavenagh to be crucial to justice. The report identified four ways in which it felt the two approaches to be incompatible.

Firstly, where no proof of involvement in an offence could be established, or where the offender was not criminally liable, no action could be taken even where preventive measures appeared necessary. (Para. 54 (1)). An important difference between Scotland and England in this respect, as we have seen, is that children in Scotland were not offered the protection of the rebuttable presumption of *doli incapax* which was available to children in England until their fourteenth birthday.

Secondly, punishment was too restrictive in its application to the offender whereas others could be included in a programme designed on preventive or welfare principles. (Para. 54 (2)).

Thirdly, alteration to the needs of the child could be inhibited by the crime - and - responsibility approach where punishments would mainly be related to the nature of the child's involvement or the nature of the offence. (Para. 54 (3)). Indeed, the intention of the report, which was not accepted fully, had been that the concept of criminal responsibility be completely abandoned. (See Kilbrandon 1966).

Lastly, punishment is once and for all whereas treatment or

welfare measures may require to be altered in the light of changing needs. (Para. 54 (4)). Flexibility of approach was therefore necessary in dealing with children in terms of need and simply in relation to specific offences. With the emphasis in the report also on parental involvement, some of the proposals and the principles underlying them do seem to have been influential in determining the character of later English proposals.

However, in view of the difficulty in reconciling the principles underlying crime and its punishment on the one hand and those underlying welfare, or as Kilbrandon referred to it, educative ones on the other hand, the Committee did not accept that further modification to the existing system of juvenile justice would have made any real impact on the problem. (See para. 57). Whereas both Ingleby and Children in Trouble attempted to resolve the dilemma of the juvenile court by making a number of procedural modifications, Kilbrandon argued that the two functions, adjudication and disposal, should be separated. The argument was given extra strength by the further claim that the skills required for adjudication of questions of fact were mainly legal or judicial and the question of sentencing was

"...an entirely separate one and calls for quite different skills and qualities from these to be applied in deciding on the action to be taken in relation to delinquent children once the fact is established." (Para. 70).

Though the 1968 White Paper in England had proposed alterations to procedure, the retention of the juvenile courts meant that magistrates could still be involved in questions of fact and questions of welfare, though welfare decisions were also to be made by the social services. The Kilbrandon solution was

"to devise a procedure whereby juvenile offenders would in all cases be brought before a specialised agency whose sole concern would be the measures to be applied on what amounts to an agreed referral." (Para. 73).

Such a specialised agency would also benefit parents in allowing them a more realistic opportunity of becoming involved in the process of making decisions about their own children, thereby fostering parental responsibility. (Para. 76). The courts had

not been able to give sufficient attention to the role that might be played by parents in formal proceedings. (Para. 36).

By analogy with the office of public prosecutor, the committee recommended that the initial referring agencies (police or social services) should not have the responsibility of forwarding cases to the juvenile panels. This was to be the function of a new type of official, to be known as the Reporter, who would make initial assessment of cases and decide as to the necessity for referral to the panels. And though he would be required to make preliminary assessment of cases in terms of need for treatment (para. 97) he would also be required to be competent at handling both the legal issues and wider questions of public interest. (Para. 98). Though he was obviously to be involved as a 'filter' through which only appropriate cases would be referred to the panels, the lack of definitive statement as to his qualifications (see para. 102) has meant that with the wide discretion involved different policies have evolved in different geographical and administrative areas. His role is a crucial determinant of the numbers of children dealt with by formal means of intervention as well as of those alternative measures available which he can utilise himself.

Even where the sole function of the 'specialised' agency was to be the consideration and application of appropriate measures, offence behaviour was not completely without significance. For

"The offence, while the essential basis of judicial action, has significance only as a pointer to the need for intervention. Its true significance will not necessarily be found on the basis of any preconceived standard i.e. by viewing the offence simply as an act in isolation and judging its potential seriousness simply by the ready-made standards offered by the range of sanctions which the law (and thus society at large) attaches to the particular class of offence which it exemplifies." (Para. 71).

Definitions of delinquency in legalistic and judicial terms were considered inappropriate in their inability to express the nature of children's needs of which delinquency was merely symptomatic. Delinquency was no longer to be conceived of simply as a legal label or category but was a behavioural condition requiring diagnosis, assessment and treatment. Accordingly, it was not

appropriate to deal with it through the medium of the criminal law as it was essentially similar to other forms of behavioural conditions or circumstances, such as truancy. Delinquency in concept was theoretically removed from the jurisdiction of criminal law and in practice was to be the responsibility of the new 'public agency', which was in itself an extension of the social services concerned with children's needs. (Para. 234). It is perhaps worth noting that not all commentators on the English and Scottish systems have been convinced of the theoretical and pragmatic merits of such a 'treatment' approach. (Morris and McIsaac 1978; Fox 1974).

So far the arguments against the juvenile courts were that the procedure was inhibitive of the implementation of a treatment philosophy; that parents could not be wholly involved in the decisions about and application of measures in respect of their children; and that children's needs were in general being met only inadequately. Delinquency was not really a problem for the courts and was not simply a legal or judicial status conferred on children but was symptomatic of some underlying condition or circumstances which fell within the domain of a welfare institution whose primary objective would be that of meeting need.

Lord Kilbrandon himself was later to assert more explicitly that the treatment of children was no longer to be a small part of the system of criminal jurisdiction but was instead to become a small though important part of the system of the social services. (1966).

It was the very fragmented nature of the social services themselves which was also the focus of examination by the committee who considered that any attempt to deal with delinquency necessarily required the supporting framework of a single agency charged with the responsibility for the prevention and reduction of juvenile delinquency (para. 39). And though the terms of reference of the committee were restricted to provisions for children, the committee anticipated that their proposals would have benefits for young and old alike, consonant with the conceptualisation of delinquency as one form of social need. Consequently, Kilbrandon proposed a new department, the social education department, which would have overall responsibility for dealing with children and would represent a merging

of all the existing services whose primary concern was with the problems of children in need. Such a department would not only provide diagnostic and assessment functions but would also be responsible for executing the decisions of the new panels. In view of the fact that decisions about need and measures of care were to be made both by the new panels and by the new social work departments, it was not clear who was the correct assessor of need was to be.

An interesting feature of the report was that whereas the committee had espoused a treatment or welfare philosophy, and had recommended the extension of supervisory provisions, there was still a role to be played by the courts. Children could still be required to appear in court for a number of reasons. Despite the promise of the legislation, there remains an intricate network of relationships between the courts and the Hearing system in Scotland. At a time when England retained the court structure, it is perhaps not surprising that in Scotland the Children's Hearings were not given the monopoly for dealing with children who may be 'in need of compulsory measures of care.'

Despite the creation of a specialised tribunal to make decisions in terms of the need for compulsory measures of care, and the rejection of the judiciary as being ill-equipped for making decisions about the welfare of children, there is nevertheless considerable contact between the courts and the Hearing system. With the retention by the Lord Advocate of the right to prosecute, children in Scotland may still be dealt with in court for a number of reasons. Conceptions of the Children's Hearing system as a radical form of juvenile justice have to be qualified by the reminder that children in Scotland over the age of criminal responsibility may still be prosecuted.

What has to be remembered is that though the conceptual framework underlying the system of Children's Hearings is based on a philosophy of welfare and determinism, the age of criminal responsibility in Scotland remains at eight. A sharp reminder of this was presented in the unfortunate case of Mary Cairns, (see Bruce and Spencer 1973) the young Glasgow child involved in a stabbing incident with one of her friends. Thus, though the Scottish system accepts the philosophy

of welfare for dealing with certain children it does not for those others who may be prosecuted. It could be argued that whereas the conceptual ambiguity of care and control was resolved in England by the distinction of 'care' and 'criminal' proceedings within the juvenile court structure, the Scottish solution was to separate the two realms of operation. There was, however, no exclusive commitment to welfare. This is also reflected in the fact that of those children who are indeed prosecuted, some may well be sent to exactly the same residential institutions as those who were dealt with by the Children's Hearing.

Further, where a child or his parents do not admit the ground of referral at a Hearing, the case, as is by now well known, must be referred to the Sheriff who must decide whether the facts of the case have been proven or not. Where they are, the child will again appear before a Hearing for appropriate disposal. What appears as an apparently cumbersome procedure is derived from Kilbrandon's recommendation to separate the adjudication process from the decision as to the appropriate measures of care.

These areas of contact in fact recognise the different spheres of operation of the courts and the Hearings in that adjudication and prosecution are legitimate judicial enterprises, whereas the function of the Hearings is to reach the most appropriate decision.

The solution of the committee to the problems associated with delinquency then involved taking children under the age of sixteen outwith the scope of the criminal law, with notable exceptions; to replace the juvenile courts by a system of juvenile panels; to appoint an intermediate official who alone would refer cases to the panels and to establish a matching fieldwork support which would be charged with the assessment and diagnosis of children's needs as well as the execution of the necessary measures of care.

Social Work and the Community

The White Paper which followed the report, Social Work and the Community accepted the main proposal of the committee in respect of the abolition of the juvenile courts in favour of a system of juvenile or children's panels. There had however been criticism as to the

applicability of a 'social education department' as the main supporting agency fieldwork and the government in fact suggested that a social work department would be more appropriate. Morris (1974) sees the change from social education to social work department as one of 'status gains' and 'moral victory' with no fundamental difference in the functions of the two proposed agencies. What had been conceived of by Kilbrandon as the functions of a social education department were indistinguishable from what is usually considered to be family casework. The appointment of a joint working party to advise the government had also been composed of three prominent individuals closely associated with social work, a fact that may well have contributed to the changes included in the White Paper. Moreover, the Child Care Association, which had welcomed the welfare orientation of the report, expressed doubts about the responsibilities of the new agencies being given to a social education department. (The Scotsman 1964). The Association argued that, as the McBoyle Committee¹⁸ had proposed an extension of the responsibilities of local authority child welfare services, it would be more appropriate that the new fieldwork agency be composed of the members of such departments. The civil service had in fact been criticised for having established two separate committees with terms of reference to examine issues and questions which had broadly similar underlying circumstances. (See Morris 1974).

The bulk of the criticism of the White Paper was to come not from the magistracy, even with the proposed abolition of the juvenile courts, but from the probation service. The general criticism of any proposal which would establish an administrative agency for dealing with problems of delinquency had been that there would be insufficient safeguards. In fact, though the Kilbrandon Report had urged the abolition of the juvenile courts, children could still have resort to the courts. Where a child denied the facts on which a referral was based, his case could be heard by the Sheriff, as the committee had only separated the functions of adjudication and disposal and had not done away completely with the court. Moreover, the right of appeal was to rest with the Sheriff in the first instance, a proposal that was to create

18. Committee of the Prevention of Neglect of Children.
Cmnd. 1466, H.M.S.O. 1963.

difficulty in its implementation. (See Grant 1976 ; Asquith 1979). But children could also, under the Kilbrandon proposals be prosecuted as the Lord Advocate was to retain the right of prosecution but was to exercise his power

"only exceptionally and on the gravest crimes, in which major issues of public interest must necessarily arise, and in which, equally as a safeguard for the interests of the accused, trial under criminal procedure is essential." (Para. 127).

Such a proposal may then have satisfied the judiciary, some of whom later commented favourably on the recommendations, (Aikman Smith, 1974), in that they were theoretically still charged with safeguarding the liberty of children, though not of all children who were caught up in the formal means of intervention.

However, the probation service had made similar representations to those ^{which} their colleagues were later to make in reference to the 1965 White Paper in England. The Scottish Branch of the National Association of Probation Officers maintained that the requirements of a judicial system would not be met satisfactorily under the new proposals. (1965) But as Morris argues (1974) even the criticism by the probation service of the proposals for the abolition or of the courts' representatives diminished by the time of the 1968 Social Work (Scotland) Bill. By that time, the Scottish probation service, which lacked the co-ordination of the English service, was devoting its energies to fighting inclusion in the new generic social work department, a battle which, in Scotland they were to lose. (Morris 1974).

In the late sixties then in both Scotland and England and Wales, a welfare philosophy was accepted as the legitimate paradigm for dealing with children who commit offences; the distinction between children in need and children who commit offences was further elided; and the respective systems of juvenile justice were further modified, a development that took place in both countries in the context of the reorganisation of social work. The basic and crucial difference between the respective systems was the retention of the juvenile court in England and the creation of a new specialised tribunal in Scotland. It is to the significance of this that we will return in the preliminary comments to the empirical study reported in this thesis.

SECTION III

EMPIRICAL STUDY

CHAPTER V

AIMS OF THE EMPIRICAL STUDY AND REVIEW OF RESEARCH

So far we have examined potentially 'available ideologies' and the extent to which they find expression in formal systems of social control. Our purpose now is to consider the significance of the apparent ambiguity between welfare and more legalistic approaches to delinquency control for the making of decisions about children who commit offences. In particular, we set out to examine the frames of relevance employed by panel members (in Scotland) and juvenile magistrates (in England) in the process of interpreting information and the making of decisions. The intention in adopting a comparative approach in the research was to analyse important differences in the two systems of juvenile justice, particularly in terms of what actually happens in the hearing of a case. In the early research literature on the operation of the Children's Hearings system in Scotland (May 1971; Smith and May 1971; Mapstone 1972) much was made of the fact that juvenile justice in that country would be subject to the stereotypes and typifications of lay people, i.e. the panel members. Yet, in many respects, though there are of course important differences between juvenile magistrates and panel members they share a number of similarities. Not least is the fact that juvenile magistrates are themselves 'lay persons' though the process of selection and training may differ from that experienced by panel members.

Panel Members

The Kilbrandon Committee in its rejection of the juvenile court based in part on the inappropriateness of the skills of the judiciary for making decisions about the welfare of children was thereby committed to making alternatives. The committee had recommended that the Sheriff in each area should be charged with the duty of appointing a sufficient number of persons who were in his opinion

"specially qualified either by knowledge or experience to consider children's problems." (Para.92(a))

What makes the choice of the Sheriff as the person given such responsibility as particularly surprising is that all along the report had claimed that the judiciary did not have the skills necessary for dealing with children. Yet, the proposal meant that reliance was being placed on the ability of the judiciary to select people who did have the appropriate skills. In view of the fact that delinquency was conceived of as a behavioural condition and not a legal status ~~this~~ is even more surprising. This was altered in the white paper, Social Work and the Community (Cmnd 3065), which also emphasised the desirability of the involvement of the community in meeting the problems that arose within it. Panels were to be composed of people

"drawn from a wide variety of occupation, neighbourhood, age group and income group" (para 76)

and who were acquainted with the neighbourhood from which the child came. Moreover, panel members were to be

"suitable people whose occupations or circumstances have hitherto prevented them from taking a formal part in helping and advising young people (para 76).

The difficulty in selecting panel members who were both 'representative' of the community and were 'suitable' (which was never clearly defined) was an issue that was given considerable attention later. (See Spencer 1973; Smith and May 1971; Asquith 1977). Analyses of the applications and membership were later all to reveal that neither initial applicants nor successful applicants were representative of the community. (See Mapstone 1972; Moody 1976; Smith and May 1971).

What is particularly interesting is that though the language of therapy, pathology and the medical analogy pervade the Kilbrandon Report, the ultimate responsibility for decision making was not to rest with 'experts' or 'professionals'.

The recommendation made in the Kilbrandon Report was specifically for 'lay' membership of the proposed panels and seems to have been made more in terms of the negative aspects of the judicial framework for dealing with children. What the arguments were for 'lay' membership are not particularly clear and this is reflected in a telling statement produced later:

"It is unnecessary for members of panels to be expert social workers. The expertise necessary in their work will be supplied by the local authority's social work department. Members will, however, need a good knowledge of treatment methods and of facilities available for applying them ... Many people will lack some of this knowledge and experience. Panel members will therefore require a certain amount of training, and it is proposed that at the outset this training will be arranged for them by the local authority." (Social Work and the Community 1966, para 80)

There are two comments that can be made here. Firstly, though the panels are to make decisions about the children's needs, it is the duty of the social work department to provide the appropriate measures of care. There does then seem to be an element of conflict in that if appropriate measures of care is a professional task, the identification of need and the decision about what measures are to be applied would also seem to call for professional social work expertise. Indicative of the lack of a consistently stated conceptual framework is the fact that whereas the Kilbrandon Report envisaged that a Social Education Department was the appropriate agency to deal with delinquent children, it was only in the White Paper of 1966 that the Social Work Department was proposed as being appropriate.¹ Secondly, the distinction between 'lay' and 'professional' becomes somewhat blurred. We suggested earlier (Chapter I,) that in the social control network no particular frame of relevance necessarily had any prior claim to validity. But this does not preclude the possibility of one agency within that network having an overriding influence on the development of and maintenance of the processes of social control.

Comment has already been made (Smith and May 1971) on the difficulty of selecting not only those who would be 'suitable' panel members but also those who would be 'representative' of the community since dealing with delinquency was conceived of as a process involving community participation. Though 'representativeness' has certainly not been achieved, (Spencer 1973) the criterion of 'suitability' is not without its problems. Not being a professional agency, there is theoretically no professional frame

1. Though as Morris (1974) rightly points out the notion of social education contained in the Kilbrandon Report may not differ fundamentally from what is usually implied by 'social work'.

of relevance by which the selection of panel members can be determined. Nevertheless, they are expected to have some knowledge and experience of children's problems and with no definitive statement as to 'suitability' the influence of the social work profession in the process of selection makes it not unlikely that successful candidates are those most amenable to social work principles. Though not sharing completely the professional frame of relevance of the social worker, the panel members' susceptibility to social work principles allows for a degree of shared understanding of children's problems.

Each panel area in Scotland contains an appointed advisory body, the Children's Panel Advisory Group (C.P.A.G.) who are responsible for the selection and later training of panel members.

There are a number of ways in which an individual can seek membership of the children's panels. The most common way, as testified by the panel members in this study, is for would be panel members to put their own name forward either at the instigation of or at least through contact with certain organisations or individuals (some of whom are themselves panel members). Since panel members 'require a certain amount of training' (see above p.134), successful applicants will then go through a programme of instruction, visits to institutions, lectures from interested individuals who have either experience in behavioural problems of children or general social work experience or who have conducted research on the system, and workshop or seminar type discussions on the role of the panel member. (See Martin and Murray 1976) What is obvious is that in the training of panel members, there are a number of professional bodies involved and not just the social work profession.

What we have suggested earlier (Asquith 1977) is that the distinction between 'lay' and 'professional' status is perhaps best represented by points on a continuum and ^{that they were} not mutually exclusive categories. The significance of this for the present thesis is that though not a professional, the panel member has to assess and interpret information and material from a number of professional organisations. Moreover, the only measures for dealing with

children who commit offences, supervision at home or residential supervision, will involve such organisations, particularly social work. The move away from a punishment non-treatment approach to a more treatment non-punishment oriented approach has then in Scotland resulted in a system of juvenile justice in which an administrative form of tribunal² manned by lay persons is serviced and provided with information from a number of ancillary services.

Juvenile Magistrates³

Cavenagh points out that the development of the juvenile court, as we have seen, has been continual in the light of growing experience and of increased knowledge about children (1966). The advances in knowledge and understanding of child development and the social and emotional factors involved in child delinquency has meant a greatly increased role for the child care and social services. It was precisely because of the inappropriateness of decisions about the welfare of children being made by the judiciary that the Kilbrandon Report had recommended the creation of a new body of individuals who by virtue of their expertise or personal qualities were to be successful in their application for panel membership. In England however with the retention of the juvenile court it would have been difficult to construct an argument relieving magistrates of their duties in the juvenile court. Yet since the 1969 Children and Young Persons Act one of the concerns voiced by magistrates is that they are losing the power to make decisions about the welfare of children. The social services department has in fact been granted the right in a number of cases to determine the nature of the measures to be adopted for particular children. In relation to Care Orders for example the magistrates can only decide whether to commit a child to the care of the local authority or not; their decision is not about the nature of the care considered appropriate. The relationship between the social services, the magistracy and the juvenile justice system in

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2. The Children's Hearings are in fact subject to the same statutory requirements and rules as are other forms of tribunals, e.g. Supplementary Benefits Tribunal, Rents Tribunal etc.
 3. See 'Justices of the Peace : How they are appointed; what they do.' Central Office of Information 1972.

general in England then is a very different one from that between the social work department, the panel members and the Scottish system.

One of the areas in which the respective systems differ is that whereas in Scotland the Hearings are held in buildings completed unassociated with and divorced from the courts and the police, in England the police may in fact conduct the prosecution in a case and play a considerable role in conducting the affairs of the court. The police in England and Wales are then more involved in the actual operation and administration of juvenile justice as conceived within the framework of the 1969 Children and Young Persons Act. The broader implication of this for the present study is that the organisational network in the respective systems is characterised by a number of potentially competing ideologies to which different agencies (panel members and magistrates, the police, social work profession etc.) might adhere in varying degrees.

We saw that panel members are meant to be, as far as possible, both 'suitable' and 'representative'. Though this has obviously caused some concern north of the border (Spencer 1973; Smith and May 1971), precisely the same issue has been important in the selection of persons to the magistracy in England.

Magistrates are to be suitable in point of 'character, integrity and understanding'.⁴ Moreover, the Advisory Committee, responsible for selection and training in the different areas,

"... must not only recommend suitable people but they must also make sure that each Bench is broadly representative of all sections of the community it has to serve." (5)

What is implicit in this quotation is more than the suggestion that the Bench should be representative; it also brings into relief the way in which the selection process itself can influence the profile of the Bench in a particular area. For example, the Royal

4. 'Appointment and Composition of the Magistrates Bench'. Magistrates Association. Revised 1975, para 2.

5. op.cit., para 10.

Commission on the Justices of the Peace⁶ commented on the political nature of the selection made and recommended that each committee should see to it that there be no political bias in the composition of the bench.

Similarly, the Royal Commission had also pointed out (para 32) that 71% of all magistrates were either non-employed, professional men or employers and only a small proportion were wage earners. (See Hood 1962)

Magistrates may not be appointed to the bench for the first time if they are over 60 and indeed the Magistrates Association (1975) urge the recruitment of younger magistrates. Lord Hewart, Lord Chief Justice, as long ago as 1935 commented, with specific reference to the juvenile court

"Is it not desirable that magistrates in these juvenile courts should be of parental age, varying from 40-60 rather than of the grandfatherly period which runs from 60 to a happily distant future." (1935)

What has to be remembered in this respect is that only those who are magistrates in the adult court can be magistrates in the juvenile court. Magistrates are thus required to deal with diverse issues and are not, in the case of the juvenile court, exclusively concerned with the deeds or needs of children.

As in the Scottish system, anyone can nominate himself but a nomination from a recognised organisation is considered to carry more weight. Most of the magistrates in the present study, for example, had been nominated or at least supported by an organisation of some kind.

Given that the development of the juvenile court has been in association with increased knowledge about the problems of children, training of successful nominees would appear to be of extreme importance. Indeed since January 1966 it has been obligatory for all magistrates to take basic training. Panel members as we have seen are also offered training but because of the different objectives related to their task, the training in general differs. Magistrates, whether in the adult or in the juvenile court, not only

6. Cmnd.7463, July 1948.

sentence but, rather obviously, also decide on what we have referred to as the allegation issue. That is, they must also determine responsibility or liability in offence cases. The significance of this for our study is that basic training is related to a wider range of responsibilities than is the case for panel training. Basic training

"... is designed to enable them to understand the nature of their duties, to obtain sufficient knowledge of the law to follow normal cases, to acquire a working knowledge of the rules of evidence and to understand the nature and purposes of sentences." ⁷

Magistrates are required to familiarise themselves with the basics of legal and judicial procedure, as well as the issues relating to sentencing, though in the 1948 Royal Commission Report it was recognised that it would be difficult, if not impossible, to give the lay magistrate considerable knowledge of extensive and complex law. It is for that very reason that Hood (1962) highlights the importance of the Clerk of the Court.

One important difference between the role of panel members and that of juvenile magistrates is that, as well as working within a more legal and judicial form of proceedings, magistrates can in fact do a lot more than commit juvenile delinquents to the care of the local authority. They can in fact adopt more punitive measures. Magistrates have amongst their options

- (i) An order for the parent or guardian to enter into recognisance to take proper care of the juvenile;
- (ii) A Hospital or guardianship order;
- (iii) A fine;
- (iv) An attendance centre order;
- (v) A detention centre order;
- (vi) Committal of young person of not less than fifteen years old to the Crown Court with a view to Borstal training being imposed;
- (vii) Absolute Discharge;
- (viii) Conditional Discharge subject to the condition that he commits no offence during a period not exceeding 3 years;
- (ix) Supervision Order placing the juvenile under the supervision of the local authority; and
- (x) Care Order placing the child or young person in the care of the local authority.

7. Magistrates Association 1975.

Unlike the Residential Supervision requirement in Scotland, the Care Order is not an order for residential care though that may indeed be the outcome. As with the Supervision Order, the decision as to what form supervision or care may take, that is the responsibility of the social services department.

The general point to be made however is that the conceptual ambiguity inherent in the control or the care of delinquent children is reflected in the availability to magistrates of different forms of proceedings (care or criminal) and different types of measures. Whether in practice there were any real differences between juvenile justice in Scotland and England was one of the questions we sought to examine empirically. Before turning to a consideration of the major hypotheses of the study we wish to state our scepticism at a recent statement which suggests

"... the type of tribunal (juvenile court or welfare tribunal) is largely unimportant. What is crucial is the philosophy underlying that tribunal and the ideology of its practitioners." (Morris and McIsaac 1978, p 111).

Our belief is that any examination of the 'ideology of practitioners' must of necessity be theoretically related to the construction or accomplishment of social institutions such as juvenile court or welfare tribunal. In this respect the major hypotheses of this study are related theoretically to the discussion of the relationship between formal and informal ideologies. In the same way, our brief review of relevant research at the end of this chapter is influenced by the desire to assess the extent to which such research has been conducted within a methodological framework appropriate to our concerns.

Major Hypotheses in the Study

For the purpose of this study we refer to those factors which relate to children's 'needs' or 'interests' as welfare factors; thus information about the personal, social or environmental background of the child is considered to be 'welfare' factors. Statements which allude more to the offence and the nature of the child's involvement in it are referred to as judicial factors. We recognise of course that these are rather vague and at the same time rather restrictive concepts. Indeed what we have

argued from the start of this thesis is that the potential for conceptual ambiguity underpinning systems of juvenile justice makes it difficult to separate welfare or judicial orientations, punishment or treatment, and care and control. Later in this thesis we shall present our own findings which we shall use to argue that such neat distinctions are not easily maintained by those responsible for the implementation of social policy for delinquents. However, the utility of the difference between 'welfare' and 'judicial' considerations at this stage of the thesis is that we can then examine the practical accomplishment of juvenile justice within systems one of which, in organisational and structural terms, is more judicially oriented than the other.

Hypothesis I: for the purpose of decision making, panel members will treat welfare considerations as more important than will juvenile magistrates

Since panel members, in theory at least, only decide upon the need for compulsory measures of care and on the form that these measures shall take, it was felt that they would be less inclined to consider what we have referred to as legal or judicial factors, i.e. the questions related to personal responsibility, protection of the public and the nature of the offence. The frames of relevance of panel members will, we suggest, be derived more from available welfare ideologies and therefore more attention will be paid to the assumed causes of juvenile delinquency. Legal and judicial questions will be less important.

Hypothesis Ia: of the different theories of delinquency, more importance will be ascribed to welfare factors in the case based on the psychoanalytic perspective than in any other case.

The history of juvenile justice has been one in which an ever expanding role has been played by professional bodies and services. In particular, the social services perform a number of important functions in the Scottish and English system by way of providing information about and care for children who find themselves in trouble. The development of juvenile justice in both countries, as we have seen, in recent times in fact occurred within the context of reorganisation of the social services. And in Scotland, the local

authority social work department was considered to have an important role to play in the training and selection of panel members. Given the psychoanalytic base to much social casework, we treated as an empirical question the degree to which this perspective was seen as providing a more acceptable explanatory framework over other available ideologies.

Hypotheses I Ia: for the purpose of decision making, magistrates will place greater importance on the need to protect society

I Ib: for the purpose of decision making, magistrates will place more importance on the harm or seriousness of the offence

I Ic: for the purpose of decision making, magistrates will place greater emphasis on personal responsibility

These hypotheses are in a sense corollaries of Hypothesis I in that they refer to a conceptual framework derived more from a legal or judicial ideology than a welfare one. In part, they are also located within a theoretical framework which can be used to justify the infliction of punishment. However, as we have seen in the historical and conceptual sections of this thesis, there is no easy opposition of punishment and welfare. A methodological difficulty for this research was in fact to devise a strategy which would in some way allow us to appreciate how particular individuals conceived of offence behaviour. Our purpose was not simply to examine whether magistrates were more or less punitive than panel members. Rather we sought to examine how magistrates and panel members would resolve the potential for conceptual ambiguity of dealing with offences within a welfare ideology given the different organisational structures of the respective systems of juvenile justice.

Hypothesis III: there will be more open discussion in the Children's Hearings involving the parents and children than in the juvenile court

Both Kilbrandon and Ingleby questioned the validity and efficacy of court proceedings in the hearing of offence cases. Given the very different structural arrangements we set out to examine, as far as possible, whether any significant differences

could be identified and what implications, if any, these had for the accomplishment of juvenile justice.

Our concern here was to treat as an empirical question the significance of the different structures for the making of decisions about children who commit offences and not to make any a priori assumptions to the effect that the nature of the hearing had little bearing on the outcome. (See Morris and McIsaac 1978).

We have argued earlier in this thesis that we wish to examine 'frames of relevance' and working ideologies of key individuals within two different systems of juvenile justice. The basic methodological problem was that of gaining access to individuals' own assumptions about delinquency causation and control without imposing too much of the researcher's own beliefs and values in the process of the research. Put another way our difficulty was that of eliciting the frames of relevance without imposing our own. The difficulty was compounded since, as we wished to examine the nature and process of the different types of hearing, we would be confronted by the fact that three (always in Scotland and generally in England) people would be involved in the decision making process. That is, though our concern was with informal ideologies as espoused by individuals, it was apparent that we would have to recognise that the attempt to reach a decision was a collective and not simply an individual affair. This had important methodological implications for our research.

In anticipation of a fuller discussion of these methodological issues pertinent to this research, we now turn to a review of the literature in this field, to examine some of the conclusions and also the methodological approaches on which such conclusions were based.

Juvenile Justice and Sentencing Research

Given that this research was designed to examine the decision making process in a new institutional framework for dealing with children (the Children's Hearing System) there is clearly little previous research literature specifically on this topic to report.

But since the research was also concerned with juvenile justice in general and with the juvenile court in particular, this meant that an appropriate source of information was the literature on sentencing. Moreover, because of the similarities in sentencing problems in the context of the adult criminal justice system and the juvenile court, it was decided to refer to research relating to both. This is not of course to deny that there are differences between the processes involved in the sentencing of adults and of children, particularly in relation to the types of alternatives available. Where they are similar however is in the conflict between the potentially competing ideologies of welfare and the more legalistic approach. The issue of welfare or control however, though it does have implication for the sentencing of adults (see our discussion on Wootton's work, Chapter III), is no more ambiguous than in the context of juvenile justice. It is in relation to delinquency control that the ideals and principles of individualised justice or the rehabilitative ideal have found their greatest expression. The development of the process of juvenile justice and the availability of alternatives to the punishment of children have been underpinned by a positivistic conception of delinquency and its control. (Bean 1976; Jeffery 1974). Grunhut, in developing the theme of the association between the juvenile and the adult courts suggests

"Even the treatment of adult criminals has, in the principal approach rather than in legal forms and statutory provisions, been influenced by the experience gained in juvenile courts." (1956, p 1)

Sentencing Research

The predominant concern of much sentencing research has been to account for the apparent disparity in sentencing decisions. (Hogarth 1971). The implication has generally been that 'disparity' is not desirable in as much as it is taken to indicate that, in some senses, 'justice' has not been achieved. However, this suggests that 'justice' means something along the lines of 'treating like cases alike', and the existence of disparity therefore is indicative of the fact that like cases have not been treated in like fashion.

But such a principle as 'treat like cases alike' would have been comparatively easier to maintain within a classical framework for sentencing, and as has been pointed out

"... the problem of sentencing disparity is closely related to the post-classical emphasis on individualised justice, which has regards to the needs of the individual offender, in contrast to the mechanical juridical emphasis on the nature of the offence." (Bottomley 1973, p 132)

'Treating like cases alike' actually tells us very little as to the criteria which are to be adopted in deciding the 'likeness' of cases as it is merely a formal, logical imperative for the attainment of justice; it offers no account of 'likeness' which must be explained by reference to the material or substantial element in the notion of justice. (Lloyd 1964; Perelman 1962). Under classical doctrine, with its emphasis on free will and responsibility, the 'likeness' of cases could be decided by reference to such criteria as the nature of the offence. In that respect, the task of deciding on like sentences for like cases was comparatively straightforward since the criteria for 'likeness' were fairly well circumscribed.

With the development and acceptance of individualised justice, the criteria by which cases can be said to be alike (the material element of justice) become 'need' criteria. That is, important factors as a basis for sentencing decisions are factors relating to the needs of individual offenders and not simply to what Green referred to as legal factors such as the type of offence, seriousness of offence or culpability of the offender. (Green 1961). But there are two problems here which have significance for much sentencing research.

Firstly, the development of individualised justice, of taking the offender's needs into consideration for the purposes of sentencing, has not wholly been at the expense of more traditional objectives in sentencing. Rather, the criminal justice system has become something of a hybrid in that sentencing decisions may well reflect punitive considerations as much as rehabilitative. The history of the development of juvenile justice in terms of the merits of court or tribunal, punishment or treatment has been in this respect

a history of compromise. (Morris and McIsaac 1978).

Difficulties in stating the objectives of the criminal justice system which would be generally accepted are then compounded by the development of rehabilitative considerations. As suggested by one commentator, the sentencer(s) may in fact have to make two types of decisions; a 'primary' and a 'secondary' decision. (Thomas 1967). A 'primary' decision is the decision made as to what framework is the more appropriate for a sentencing decision, tariff or individualised justice. Once that decision has been made, a secondary decision has to be made as to what is the appropriate decision within the framework chosen. This, as we shall later see, has important implications for the way in which information about children is interpreted within different frames of relevance.

Secondly, that offenders' needs are to be taken into consideration is by no means a straightforward principle because of the difficulty of establishing just what offenders' needs are generally, but also what a particular offender's needs are. As we have seen, research into the 'causes' of crime or delinquency has been singularly unfruitful in providing objective criteria establishing the causes of delinquency or criminality. Consequently, there are no clear or agreed upon guidelines as to the 'needs' of offenders. Moreover, and certainly related to what has just been said, research into the 'effectiveness' of different types of rehabilitative measures has likewise been somewhat disappointing, adding to the very complexity of the sentencing task. (Indeed the very lack of objective criteria about the 'causes' of delinquency has meant that formal systems of delinquency control are continually under review. (Asquith 1978)).

Thus, there is by no means consensus as to what the objectives or goals of the criminal system are, how to achieve these goals and what the needs of offenders are. Consequently, this makes any attempt to compare sentencing decisions and sentencing patterns a rather crude affair. (Hogarth 1971; Bottomley 1973; Hood 1962).

As has been noted, much of sentencing research, with notable exceptions, has largely focussed on identifying factors which might explain the apparent disparity that appears in sentencing. But because of the difficulty in establishing just what the objectives of the criminal justice system are the notion of disparity then becomes problematic. With the development of individualised justice, and the expansion of the welfare or rehabilitative ethic within the system of criminal justice, the task of sentencing has become more complex. It has thereby also become more difficult to appreciate what the actual bases of sentences are. Consequently, it has become more than problematic simply to assert that sentencers lack uniformity or consistency, or that sentencing patterns reveal inequalities, because it is more difficult to appreciate the factors the sentencer takes into consideration, the goals he hopes to achieve, and the reasons for his decision. Sentences which may, *prima facie*, indicate a degree of disparity may in fact be attributed to the unique circumstances associated with the case; on the other hand uniformity and consistency of sentencing may well be due to the ignoring of the unique features of different cases. The logical implication of the principle of 'treat like cases alike' is that cases that are unlike in important respects should be treated differently. *Prima facie* disparity or inconsistency may well reflect the acceptance of the premises on which individualised justice is based. Once again the relevance of information for making decisions about children who commit offences is to be treated as an empirical question.

The relevance for this research of treating the notion of 'disparity' as problematic, is that the studies into sentencing research, some of which are considered below, employ different conceptions of the notion. One of the consequences of this is that the particular methodologies adopted by different researchers are determined by the search for factors to account for 'disparity'. Since our concern was to identify the significance of frames of relevance for the decision making process, the appropriateness or adequacy of methodological strategies employed in earlier research was for us as important as the conclusions reached.

In his study of juvenile court sentencing practice in each of the 134 police authorities in England and Wales, Grunhut (1956) found that there were wide variations between juvenile courts, particularly in the use made of fines and probation orders. The mean national figures, he suggested, also however covered a considerable amount of conformity as well as a number of local variations in the treatment practice of magistrates. A number of areas such as Liverpool and the West Riding of Yorkshire, showed a high rate of fining with a low rate of probation orders. (1956, p 74). After showing that there was a coincidence between 'high delinquency' areas and 'low rates of probation',⁸ he concluded that where there were smaller and more manageable numbers of delinquents, there was greater opportunity for consideration of individual cases, resulting in a more frequent use of probation. But where there were largely populated areas, with a greater incidence of juvenile delinquency, the volume of work magistrates were required to deal with meant that they had less opportunity for adequate consideration of cases, resulting in a greater use of fining. Grunhut suggested that evidence for the 'complementary character of fines and probation' (1956, p 83) comes in two forms. The first is that a preference for fining is associated with a sparing use of probation; conversely, a preference for probation is associated with the less frequent use of fining.

Patchett and McLean (1965) used as a basis for their study into sentencing practice in juvenile courts in the Sheffield area, Grunhut's discovery of

"... belt of districts with high rates of fines stretching throughout the north Midlands."

The region around the Sheffield area for example had made use of fines around 6% above the national average. However, such a figure in

8. He had in fact argued that "any investigation of the treatment practice of magistrates' courts ... must take into account the amount and structure of delinquency in different localities." (1956, p 13).

itself, suggested Patchett and McLean, hid wide variations in sentencing within the region. Commenting on the differences between urban and rural areas, the authors felt that it would have been expected that these differences would have been more significant than those between similar urban areas (such as Barnsley and Doncaster). In attempting to account for such variations within the region, the authors examined the relationship between such factors as the caseload size of the probation officers in the areas as possible contributory variables to the decision as to whether or not to make a probation order. But there was no significant relationship. On the broader level, the authors asked why it should be that two different courts, only separated in some instances by a matter of miles, with changing composition and combinations of magistrates should follow widely different patterns of sentencing. Their conclusion was that the relevant factors that could account for this were largely internal; that is, it was due to the approaches adopted by the magistrates. Wide variation in the use of the various alternatives suggested

"... basic differences in the selection of sentences, underlying which may be found major differences of outlook concerning the policy to be implemented." (1965, p.710)

Indeed, Patchett and McLean had themselves questioned whether lack of uniformity or the display of disparity was the real problem. Their position was that 'strict uniformity may in fact reflect a failure by magistrates to take into account all relevant factors' (1965, p 699).

It is interesting that such a statement could be made even though the researchers had neither collected information on the types of offences or offenders appearing before the courts nor on the magistrates themselves, since the research was primarily concerned with sentencing practice in juvenile courts. However, one of the inadequacies of this type of research has been, depending as it does on official statistics and records, that it tells us more about 'decisions' made than it does about 'decision making'. Yet the conclusion often drawn from such studies is that in the absence of any identifiable factors, disparity or variation can be attributed to some indefinable element such as 'the personality of the judge', even though the methodologies adopted only allow conclusions about

how certain individuals make decisions to be made at the level of inference. Few studies - with notable exceptions - have been designed specifically to examine 'decision making' as such.

One of the studies which indicated the influence of 'the human element' on the sentencing process was that conducted by Mannheim, Spencer and Lynch (1957) whose main aim was to examine the extent to which uniformity could be observed in a random sample of cases in one particular area. The area which was the focus of their study was London and the hypothesis which they set out to examine was that

"there was consistency in the adjudications of the London Court."

Taking a sample of 400 cases, divided into sub-samples of 50 cases for each of the eight courts in the area, information was collected on (i) Legal and Administrative; (ii) Sociological; and (iii) Psychological factors. The source for such information was mainly the court records, though this was also supplemented by information from significant personnel such as social workers. Mannheim et al. concluded that such factors as the sex of the Chairman of the magistrates, court identity and characteristics of the area in which the court was located contributed little to explaining the similarities or otherwise in the use made of different orders. Moreover they concluded that they could not claim support for their hypothesis from the data of their study but that this may in part be attributable to the inadequacy of their information. This was a particularly telling conclusion in as much as the authors had suggested that the methodology adopted in their study had the advantage that the researcher, who did not actually attend the hearing of cases, was 'detached' from the courts, and their operation, which he knew only as numbers. But, perhaps, more importantly, they suggested that

"it is the intuitive assessment of individual cases which in the main prevails. The next step ... might usefully be a study of magistrates' attitudes ..." (1957, p.138)

Hood (1962) also studied sentencing practice in different areas, an intention which he firmly stated;

"The main difference between our study and most of those undertaken in the United States and Europe is that it is not concerned with differences between individual judges or with change of policy over a period of time but with differences between areas, that is, groups of judges." (1962, p 9)

It was also suggested that Hood improved on work such as that of Mannheim et al. in that he did not simply make use of court records and official statistics; rather he attempted to appreciate the policy of particular courts by supplementing information from records by actually visiting the courts in question and by interviewing some of the key personnel therein. The research had its origins in the fact that the use of prison sentences by magistrates' courts in England showed considerable variation. For example, from 1951-1954 inclusive, the proportion of adult males sentenced to imprisonment for indictable offences varied from 3% to 55% of all sentences for indictable offences.

By taking the average for each police district in each of the four years the respective figures are 8% and 47%. Of all the courts, 60% had an imprisonment rate of between 14 and 28%. Hood's main purpose was to show the extent and nature of the variations in the practice of a number of magistrates' courts, for which twelve were chosen in terms of whether they sent a high, low or average number of men to prison in the years in question and whether they were representative of urban areas both large and small, industrial and residential, old and new. (1962, p 21)

To test 'whether the local variations in imprisonment rates can be explained in terms of the circumstances of the offenders appearing before the courts or by the seriousness of the offences which they commit', (1962, p 28) information on the offences committed and on the background of offenders was collected for each court. Though he was able to show that there were a number of differences in the distribution of offence and offender characteristics between the different courts, these had no significant relationship to the imprisonment rates. Amongst the more important conclusions Hood made was his suggestion that such differences as existed in sentencing practice, might be the product of the adoption of different 'policies' of the magistrates and that 'imprisonment policies of magistrates appear to be related to the social characteristics of the

areas, the social constitution of the bench, and its particular view of the crime problem' (p 78). Though Hood did attempt to supplement the kind of information that Mannheim et al. gathered by actually visiting the courts in the study, the information on the characteristics of the area and of the attitudes of the judges was nevertheless of an impressionistic nature and had not been collected consistently for each of the courts. As has been noted elsewhere (Hogarth 1971), such impressionistic information/data has reduced the significance of otherwise important findings that judicial attitudes and court policies may not completely be divorced from the nature of the 'social structures' of the court areas themselves.

Whereas the studies above described draw their conclusions mainly from official records and statistics relating to sentencing patterns and variations between courts or areas, other studies had focussed on the differences in practice between different judges. Gaudet (1949) for example had analysed a sample of 7442 cases of certain offences dealt with by 6 judges over a ten year period. His major conclusion was that

"... one is forced to conclude that the differences among these judges in their sentencing behaviour can best be accounted for by the use of the general term 'personality'". (1949, p 452)

and that

"... the criteria for sentencing are unevenly and capriciously applied; that the primary influence upon sentence is the personality of the judge." (Hogarth 1971, p 8)

Thus though Gaudet's work had adopted a different notion of disparity, in that his objective was to examine the difference in sentencing between judges, his conclusion was basically the same as that advanced later by such as Mannheim et al. But Gaudet's work suffered from the problem that though he attributed the disparity in sentencing to the 'personality of the judge', the concept of personality was defined rather vaguely in terms of social background, education, religion, experience on the bench and social attitudes. Yet he found no consistent relationships between such characteristics and sentencing behaviour. (Bottomley 1971, p 152).

Not only is it therefore difficult to appreciate what Gaudet meant by personality; he also produced no evidence in his study as to the significance or otherwise of such variables as social background, education and attitudes. (Hogarth 1971).

With particular reference to Gaudet's work, Green (1961) criticised much of sentencing research on the grounds that it had previously stressed the non-rationality of the sentencing process, and that no work had included a systematic analysis of legal criteria in sentencing. In his own study of 1437 cases dealt with by 18 judges in a non-jury court, Green set out to investigate more extensively than other researchers the factors which underlay the variation in the gravity of penalties meted out, particularly for cases of near equivalent seriousness. By considering (i) legal factors, (ii) legally irrelevant factors and (iii) factors related to the criminal prosecution process, Green concluded that the results of his study contradicted claims that there are no standards by which judges sentence convicted offenders. More positively, he argued that by taking legal factors into account, sentencing practice could be shown to operate in terms of 'orderly processes which flow reasonably from the penal philosophy implicit in the law.' Thus the legal make-up of the case, which includes such factors as the nature and severity of the offence, the number of the charges and the offender's past record, do in fact impose constraints on sentencing. Legally irrelevant factors, which Green referred to as the biosocial traits of the offender (sex, age, race, birth) and factors in the criminal prosecution, by which he meant differences in the court personnel and the type of plea, did not significantly affect the variation in the sentences.

Amongst the more important factors which he claimed did influence the sentencing decision were the seriousness of the offence and the previous convictions of the offender. But even here, though the severity of the penalties decided upon by the judges generally reflected statutorily prescribed guidelines, offences which had involved the infliction of bodily harm tended to be dealt with more severely than other types of cases.

To test the significance of the role which he concluded legal factors played in sentencing, Green attempted to construct a predictive measure derived from permutations of different 'legal' factors, by which the likelihood of committal to prison or some community based measure could be determined actuarially.

However, there was not complete uniformity in the sentencing behaviour of the judges in his study in as much as there was less inconsistency amongst judges in the types of sentences imposed for the most serious and the least serious types of cases; the greatest disparity occurred in relation to those types of cases which fell between the two extremes. As Green states

"As cases move from the extreme of gravity or mildness towards intermediacy, judicial standards tend to become less stable and sentencing increasingly reflects the individuality of the judge." (1961, p 69)

The Legal or Black Box Model of Sentencing Research

A common feature of research into sentencing, and certainly characteristic of those studies described above, is that they may be said to be typical of what Hogarth (1971) refers to as 'black box' or 'Legal' models of sentencing research. By this is meant that type of research which is characterised by the collection of information, the 'facts' of the case, from official sources; the information provided from the official records and statistics about the offender or the offence such as the type of offence, seriousness of the offence, past record of offender and so on, are then correlated with the sentencing decisions actually reached in respect of the cases in question. The sentencing decision is considered in this way to be the dependent variable and the information about the offender or the offence are the independent variables which either singly or in a number of combinations can be said to account for the decision or pattern of decisions. Such a model of sentencing research may be referred to as the 'black box' model in as much as relatively little is known about the magistrates themselves since it assumes

"that the only significant variables affecting sentencing decisions are those externally visible 'facts' available from judicial records." (Hogarth 1971, p 341)

Such a model may also be referred to as the 'legal' model in that the conception of the 'facts' of the case as being directly associated with the decision is consonant with a notion of

"law being a constant and the personality of the judge being legally irrelevant." (Hogarth 1971, p 341)

In many respects such an approach to sentencing research treats the implementation of penal policy and the law, as the imposition of sanctions for particular forms of proscribed behaviour as the mechanical application of legal principles in which the role of the judge is conceived merely as being the medium through which the law finds expression.

The notion of the 'facts' of the case being objectively given also ignores what Hogarth refers to as the 'selective perception' of judges. That is, by adopting a methodological strategy which is grounded in the assumption that sentencing decisions can be accounted for by simply analysing the information about the offence and/or offender, much sentencing research is insensitive to the way in which judges interpret such information. As has been noted elsewhere (Asquith 1977) such strategies treat the idea of what constitutes 'relevant' information as non-problematic. But a difficulty is that what the researcher chooses as his relevant independent variables may not be the same variables as chosen for the purpose of sentencing. What we have suggested in Chapter I of this thesis is that information has to be assessed and interpreted in order to sift out what is relevant for the task at hand. However, since the 'system of relevancies', to use the Schutzian notion (Schutz 1970), or the 'frames of relevance' of the researcher and subject will be different, it is unwise to assume that what is relevant for the researcher is relevant for the subject. The danger is that explanations of how sentencing decisions are made are premised more upon what the researcher rather than the sentencer determines to be relevant. The two purposes, that of sentencing and that of doing research into sentencing, are different.

Moreover, there is no guarantee that the only information employed for the purpose of sentencing is contained in the records or official sources. By designing methodologies to analyse what

'facts' are associated with decisions, previous researchers have omitted from their studies any consideration of information provided but not recorded, such as information gleaned in the course of discussion in court. In the empirical part of this thesis it was our intention to examine the use of information in the different types of hearing since it seemed appropriate to our concerns about the significance of the differences, if any existed, between the court and panel hearings. Similarly, by trying to locate what facts are associated with decisions, and which may then help to account for the apparent disparity in sentencing, little consideration has been given to the question of how information is used. Most researches have been designed to examine 'what' questions and not 'how' questions, and in that sense it could be argued that much sentencing research has been primarily concerned with 'decisions' and not 'decision making'. Studies referred to earlier in this chapter for example were more concerned with the disparity in sentencing patterns between areas and courts but lacked an adequate methodological framework for examining sentencing as a decision making process.

Despite this lack of adequate methodology for commenting on decision making, it is also characteristic of such research that where the attempt to locate independent variables in the offender's background that would account for the apparent disparity in sentencing, has actually failed, inferences have commonly been made as to the role played in sentencing by the 'human element'. Thus, again in the studies referred to above, reference has been made to the influence of the 'human element' in a number of ways. Sentencing disparity has been variously accounted for in terms of 'the intuitive assessment of the individual cases' (Mannheim et al); the 'policies' of magistrates (Hood 1962); 'the personality of the judge' (Gaudet 1949); 'judicial attitudes' (Green 1961). Green's own study is particularly interesting in that having criticised other research into sentencing because of the imputation of 'attitudes' from inconsistent sentencing behaviour, his own study nevertheless drew conclusions about the relationship between judicial attitudes and consistent sentencing. That is, without providing independent evidence as to the operation of attitudes in the sentencing task, his own study was subject to similar

criticisms as he had made of others. And with specific reference to the Children's Hearing system in Scotland, Morris and McIsaac (1978) were concerned to identify the working ideologies of panel members on the basis of data about the children who were the subject of the decisions. (See Asquith 1979).

By focussing on the factual, and in Green's case 'legal', make-up of cases, and relating this to sentencing decisions, such research allows conclusions to be drawn about the influence of the 'human element' only at the level of inference. And by concentrating on decisions or sentencing patterns, and not decision making, the processual character of sentencing, in which the influence of individuals might best be examined, has generally been precluded from such studies. 'Attitudes' or 'policies' have then to be inferred from sentencing behaviour as manifested in sentencing decisions, from the statistical association of decisions with information about the case. The variables which prove to be significantly related to decisions are then used to account for disparity but in the absence of the location of significant variables, disparity is accounted for in terms of this vague notion of the 'human element'. But as Hogarth rightly suggests

"The establishment of a statistical relationship between factors such as the severity of the crime and criminal record to the pattern of sentencing decisions made does not mean that these factors were consciously or even subconsciously in the minds of the judges at the time of sentence." (1971, p 8)

Two important studies which attempted to examine sentencing in such a way as to correct some of the methodological inadequacies of much of the available literature were conducted by Hood (1972) and Hogarth (1971) respectively. Both researchers were in agreement that disparity is a problem in sentencing; that previous sentencing research had been grounded in inadequate methodologies; and that, consequently, a new methodological alternative was required to study the theoretical basis of sentencing. Moreover, both investigations rest on the assumption that there are five important factors which affect sentencing decisions. These are

- (i) the social, personal and judicial characteristics of the judges;
- (ii) the attitudes of judges towards 'disposal';
- (iii) the judges perception of the nature of the offence and characteristics of the offenders;
- (iv) the type of information considered relevant; and
- (v) the controls or constraints exercised either by law, or by courts, or informally through local sentencing norms.

However, despite the similarity in their theoretical assumptions, the methodological alternatives offered by the respective authors are very different.

In reference to his own research into the sentencing of motoring offenders, Hood suggested that it was

"...part of a recent development in criminology away from a sole interest in the offender towards a concern to understand the behaviour and assumptions of those whom sociologists like to call agents of social control" (1972, p 5)

and

"it is the views of these agents which may reflect or be reflected in the way offenders of different sorts are perceived, categorised or labelled both in court or the community " (1972, p 5)

Thus, the move in relation to sentencing research which Hood suggests his study reflects is one which recent developments in criminological theory have taken. That is, as criminological theory has moved away from simply attempting to associate variables in offenders' backgrounds with criminal behaviour, so also Hood argues that sentencing research should not simply treat sentencing decisions as the variable dependent on factors associated with the offender or his offence. The independent variable, or variables, cannot be located in the 'factual' make-up of the case per se. Rather implicit in his suggestion is the assumption that cognition or perception becomes the independent variable; that is, it is the perception of information and facts assessed for the purpose of sentencing that directly bears on the sentencing decision. There are then no 'facts' which are relevant apart from their identification as such by those deciding on a sentence. Consequently, any methodological strategy for studying sentencing must be grounded in a theoretical basis which acknowledges that the influence of information on sentencing decisions cannot be gauged independently of the way in which such information is perceived, organised, assessed and used.

Hood's later study had as its main objective to show whether the personal or social background as well as the driving experience of magistrates were related to different attitudes and sentencing practice, or whether the basic penalty approach was an overriding factor. Having decided that his inquiry should concentrate on 'serious' motoring offences in addition to two offences regarded as less serious a possible sample of 860 magistrates was drawn from 32 courts in 16 counties in England. The actual sample was finally composed of 538 magistrates. He then used a variety of methods to collect information not only on the attitudes and opinions of magistrates as individuals but also on their group behaviour. Because of the problems previous research had encountered in trying to match cases or in assuming the random distribution of cases in large samples, he decided to control variability by sending to each magistrate exactly the same cases. In this way he hoped to remove all variability due to factors other than those associated with the magistrates themselves. After the magistrates involved had studied the eight printed cases received, one for each of the offences included in the study, they were interviewed as to the decision they would make for each case, their reasons for the decision, the seriousness of the offence and about various other factors which may have influenced the decision making process.

But since the use of simulated material in itself suffered from certain defects, the primary one of which was the very fact it was a simulated or 'game' exercise, this was supplemented by other methods, some of which would allow for comparison with information gathered about sentencing in the actual court setting. Thus, Hood also used self-completion questionnaires, the Eysenck Personality Inventory, held conferences for studying group decisions, and also spent as much time in court as possible noting the details of procedure. The last tactic is interesting if only for the fact that earlier researchers had argued that by not knowing the details about the courts included in a study, the researcher had the advantage of detachment. (Mannheim et al 1957)

In his analysis Hood distinguished between three sets of variables which could potentially account for disparity in sentencing of motoring offenders. These were

- (i) Personal and social attributes
- (ii) Perceptions and attitudes
- (iii) Factors associated with Bench membership

In relation to the influence of personal and social attributes, Hood noted that one of his most important findings, a negative one, was that there were very few associations over a variety of offences with any of the personal attributes of the magistrates. Overall, he concluded that 'disparity could not be accounted for in terms of their personal backgrounds.' Similarly, though he was able to conclude that variation in the perception of the seriousness of the case is of importance, it was nevertheless impossible to generalise about the nature of its influence. But with respect to the last of the groups of variables employed in the analysis, he concluded that membership of a particular bench had a highly significant effect on the amount of the fine imposed for all eight kinds of offence included in the study. It is perhaps worth noting that despite his intention to offer a methodological framework adequate to account for the theoretical basis of sentencing, Hood's study nevertheless displays elements of the 'black box' model of sentencing research, though obviously to a lesser degree. He does gather independent information about the attitudes and perceptions of magistrates but nevertheless isolates factors, or groups of factors such as bench membership which are then used to explain or account for sentencing practice through statistical association with actual sentencing decisions. However, he concluded that the research provided ample evidence

"... that a method based on decision making in simulated cases can provide a realistic assessment of how magistrates actually behave in court." (1972, p.153)

The other study which sought to provide an alternative methodological framework, Hogarth's 'Sentencing as a Human Process', concentrated more on actual sentencing decisions than did Hood's study. The main objective in Hogarth's study was to explain the apparent inconsistency in sentencing practice amongst magistrates in Ontario. Variations in the use of particular measures

"appeared too large to be explained solely in terms of the differences in the types of cases appearing before the courts in different areas." (1971, p.12)

He also makes clear his rejection of the 'black box' model of sentencing research when he asserts that

"this is a study of the sentencing behaviour of magistrates. It is concerned with what decisions different magistrates make, how they make them, and why." (1971, p 15)

His research was designed therefore to explore the 'meaning' of sentencing as magistrates themselves experienced it and was logically committed to being based on explicit assumptions about how sentencing could be analysed. Whereas research such as that of Green and Gaudet ~~inferred~~ the existence of certain attitudes from sentencing behaviour, Hogarth assumed that prior to appointment magistrates already have certain opinions and beliefs which provide broad predispositions for specific attitudes the magistrate will later form in reference to his judicial role. As a result of their relationship to the demands of this judicial role and because of the dialectic between self conception and these demands, magistrates develop a relatively stable and enduring set of judicial attitudes. Hogarth then defines judicial attitudes as

"a set of evaluative categories relevant to the judicial role which the individual magistrate has adopted (or learned) during his past experience, problems or ideas in his social world." (1971, p 100)

Wheeler (1968) in a similar study had also argued that prima facie inconsistent sentencing or sentencing disparity could be seen to be rational given an examination of judicial penal philosophies.

Whereas the other studies had imputed the existence of attitudes from behaviour, specifically sentencing behaviour, the conception of attitudes as evaluative categories necessarily entails a consideration of how information is processed by different magistrates with different attitudes. This in turn also demands a framework for studying attitudes and Hogarth distinguishes between 'attitude scales' which are logically (theoretically) derived and those which are empirically (phenomenologically) derived. In the former, the researcher, by making a priori assumptions about the existence of certain attitudes, thereby imposes his own evaluative categories on the categories of those subjects in his research. The researcher is in danger of substituting what has been referred to

elsewhere as ~~second~~ order constructs ~~for~~ ~~first~~ order constructs (see Cicourel 1968) since the conceptual framework on which understanding or explanation is based is provided not by the subjects of the research but by the researcher himself.

Empirically or phenomenologically derived scales, on the other hand, are claimed to have the merit of not imposing the researcher's own theoretical assumptions on to the subjects since the scales are 'derived naturally'; that is, they assist the researcher to place himself within the 'framework of meaning' of his subjects (p 105). Hogarth's scales for measuring ~~judicial~~ ~~attitudes~~ since he was committed to a phenomenological method of scale construction, were therefore developed by being based on statements which satisfied several clearly stated criteria (p 107) but which more specifically should be

"... selected from the evaluative statements actually used by the individuals involved, or from those that have been made by well known persons in their environment." (1971, p 106)

Since he was concerned with judicial attitudes, the appropriate evaluative statements were therefore drawn from cases in which the Ontario magistrates had themselves been involved or from literature relating to the judicial role and with which the magistrates would be familiar. In this respect at least, there is considerable difference in the methodology adopted in this study and that of earlier researches into sentencing. Even Hood's study, contemporary with Hogarth's and based on the same assumptions, had employed a means of measuring attitudes, the Eysenck Personality Inventory, which Hogarth would be obliged to reject on the grounds of its being theoretically and not phenomenologically derived.

By adopting a phenomenological stance Hogarth argued further that the three main classes of variables to be considered in the study, the legal and social environments in which sentencing took place, and the personalities and backgrounds of the magistrates, could be reduced to one form. The manipulation and organisation of information 'as it occurred in the minds of the magistrates' could then be revealed by a method of analysis based on a phenomenological approach.

As well as information collected about the cases which appeared before the magistrates involved, two instruments were specifically designed in accordance with Hogarth's phenomenological commitment. These were a self-administered questionnaire mainly exploring the attitudes that magistrates held towards crime and how to deal with it; and a decision making guide or sentencing study sheet completed by each of the 71 magistrates for those cases involving offences selected for the purpose of the study. The sentencing study was designed to 'reveal the mental processes involved in reaching sentencing decisions.'

Hogarth's major conclusion, in relation to the penal philosophies of magistrates, was that whereas there may have been wide variations in penal philosophies amongst magistrates, individual magistrates nevertheless had a fairly consistent set of beliefs influencing their penal philosophies. Thus, whereas magistrates were inconsistent with each other, they were consistent within themselves; and once the purpose which magistrates subscribed to in sentencing - the internal consistency of their thinking in respect of their judicial role - was known, the whole of their penal philosophy could also be predicted. Moreover, he demonstrated that actual sentencing behaviour was also significantly related to attitudes and

"... the fact that variation in sentencing behaviour was found to be associated with variations in the attitudes of magistrates concerned indicates that the judicial process is not as uniform and impartial as many people hope it would be. Indeed, it would appear that justice is a very personal thing." (1971, p 365)

As for the legal and social constraints on sentencing behaviour, he suggested that the law offered little guidance to or control over sentencing but that whilst social constraints as perceived by the magistrate are closely related to his attitudes, they nevertheless do have an independent influence on sentencing behaviour. Generally, the interpretation, organisation and assessment of information on which sentences are based was seen to be consistent with personal attitudes held by magistrates. Whereas earlier studies had tended to view sentencing as a static entity or as irrational, Hogarth views sentencing as

"... a dynamic process in which the facts of the cases, the constraints arising out of the law and the social system and other features of the external world are interpreted, assimilated and made sense of in ways compatible with the attitudes of the magistrates concerned. Sentencing was shown to be a very human process." (1971, p 382)

The attention devoted to discussing Hogarth's work in this study reflects the importance his work has had in adding a truly new dimension to the study of sentencing and sentencing disparity. Prima facie disparity between magistrates may be indicative of a high degree of internal consistency maintained by individual magistrates in their interpretation, assessment and organisation of information.

The attitude scales devised by Hogarth, with minor modifications were employed by Lemon (1974). Lemon argued that no previous study had been concerned with newly-trained magistrates and that none had studied the impact of the first year training programme which by that time had become compulsory for magistrates. Whereas he used Hogarth's attitude scales to measure magistrates' attitudes to measure the influence of personality on sentencing practice Lemon used instruments developed for psychological purposes and which were designed to assess the 'concreteness' or 'abstractness' of the cognitive processes employed by individuals. Concreteness was defined in a variety of ways such as 'high dictatorialness', 'high need for structure', 'tendency to categorise into black and white', etc. 'abstractness' on the other hand

Because of the difficulties he claimed were associated with actually being in court, Lemon used simulated cases presented on tape to the magistrates.

He concluded that his study did in fact indicate that one consequence of undergoing a training programme was that newly appointed magistrates became more punitive in their sentencing practice. The first year training did in fact succeed in instilling in magistrates a 'necessary judicial attitude'. Thirty five of the magistrates were classified as 'concrete' thinkers, with the remaining 19 being categorised as 'abstract'. But whereas this personality

factor did appear to be determinant of sentencing practice, its influence seemed to depend on the nature of the case. Though he was able to show that, not unexpectedly, there was a strong relationship between concreteness and having punitive attitudes, he was not able

"to reveal any significant differences in the attitude scores of magistrates awarding sentences of different types".

That is, though he established that the first year training programme did appear to inculcate punitive attitudes, there was no evidence to suggest that in practice magistrates with such attitudes were in fact more punitive.

Of the empirical research on the Children's Hearing system, which is becoming available, though not employing a phenomenologically derived framework, Higgins (1974) sought to examine the personality attributes of panel members. Her study focussed on the first panel in Glasgow early in the history of the Children's Hearing system shortly after its inception in 1971. In an early stage of the study using the Eysenck Personality Inventory, she found that a high proportion of panel members described themselves in a 'socially desirable way'. Pursuing this she asked panel members to complete the Marlowe-Crowne Desirability Scale and concluded that a considerable proportion of panel members were 'approval seeking'. Though Higgins undoubtedly presents interesting material of an explicitly psychological nature, what is disappointing is that the significance of such material for the actual task of making decisions about children is not really developed.

The significance of 'working ideologies' or the attitudes and beliefs of key personnel for the accomplishment of juvenile justice was a central concern of two recent works, one relating to the juvenile court and the other to the Children's Hearings system. Interestingly, the conclusions reached in the respective studies, though arising from shared criticisms of the philosophy of welfare, were quite different.

Priestly et al. (1977) presented the results of a research project which looked at all the children who were dealt with under the provisions of the Children and Young Persons Act 1969 in Bristol and Wiltshire during the first three months of 1972. Though concerned

with the children in court, the authors argued that

"... we saw the system to be studied as embracing those processes associated with decisions made about any child coming before the court." (1977, p 112)
(Our emphasis)

Thus the focus of their study became the attitudes and beliefs of the key people who man the child care system and in particular, the police and the magistracy. One of their major conclusions is that it would be wrong to suggest that there exists a strong ideological consensus within members of the agencies involved in juvenile justice (1972, p 32). Further, they later argue (p 101) that at the court stage magistrates divide the children appearing into two roughly equal-sized groups; one of which they help, and the other they penalise. The general implication which they derive from this is that the principles of welfare and justice are not compatible and they recommend

"that the attempt to fuse justice with welfare be abandoned and that the juvenile court as such should disappear." (p 102)

Though Priestly et al. were interested in the beliefs and attitudes of key personnel, the research relied primarily on records for source material. And though they did interview a number of individuals from different agencies as well as the magistrates and also observed at a number of court hearings, their material on the actual process of decision making in the court room situation reveals little of what we later refer to as the form and content of the hearing.

In the study on the Children's Hearings by Morris and McIsaac (1978), the authors set for themselves as their objective an examination of

"... the ideology and practice of social welfare within that juvenile justice system; how does it work? does it work? is it different from a juvenile court? does the stated dominance of one goal prevent inter-organisational conflict? do the various groups involved in the operation of the new system change their working ideologies to fit the dominant conception?" (1978, p x-xi)

Their starting point is the apparent ambiguity between the conceptual frameworks underlying what they call 'social control' and 'social welfare'. This conceptual ambiguity is significant in that it has,

and has had, important implications for the way juvenile justice is organised and practically accomplished. Like Priestly et al, the researchers conclude that there is no shared ideology of delinquency control amongst the different agencies within the organisational network but that there is considerable tension. And since panel members and even the reporter are unable to separate conceptually 'needs' and 'deeds', children who commit offences are in fact controlled or punished under the guise of 'treatment' or 'care'. Thus they argue that despite the formal commitment to a welfare philosophy, panel members, and others in the system, make decisions on the basis of more classical and punitive considerations. Panel members may in fact operate with a disguised form of tariff decision making where considerations of the offence, the child's involvement in it and so on become relevant criteria on which to base a decision.

Again in common with Priestly et al, they conclude that the conflict between competing ideologies of control and welfare cannot be reconciled within a system such as the Children's Hearings. Unlike Priestly et al, however, they recommend the return to a system based on punishment in which the nature of the offence should be the criterion for decision making in a system of fixed penalties.

What we find interesting about Morris and McIsaac's work is that it seeks to analyse the conceptual ambiguity of control and welfare in its implication for the practical accomplishment of juvenile justice. However, we have two concerns with their approach.

Firstly, as we suggested above, Morris and McIsaac do not consider the actual form of a hearing to be significant in the practical accomplishment of juvenile justice. We treat that as an empirical question worthy of investigation.

Secondly, whereas they acknowledge the importance of the interpretive activity of decision makers in the processing of delinquency, most of their evidence about how decisions are made actually relates to what are the personal characteristics of children in the system. Methodologically, we make the same criticisms of their approach as had been applied to those sentencing studies which attributed disparity to an 'indefinable human element' though such an

inference could not be valid given the nature of the available data.

In short, our concern with the work of Morris and McIsaac in ignoring situated aspects of decision making and in adopting an inappropriate methodological strategy is that they seek to analyse 'working ideologies' without studying ideologies at work.

CHAPTER VI

FRAMES OF RELEVANCE: METHODOLOGICAL IMPLICATIONS

Whereas sentencing research had in the main generally ignored the processual nature of decision-making, it was a prime consideration of this research that an attempt should be made to examine decision-making in respect of child offenders, in the context of both the Children's Hearing system and the Juvenile Court as a process. Consequently there were several requirements that dictated the nature of the methodological strategies evolved finally for this research.

Firstly, some means had to be devised so as to allow for genuine and valid comparisons to be made between panel members and juvenile magistrates in relation to decision-making. Given the very different organisational structures and the philosophies of the Children's Hearing system and the Juvenile Court, it was considered necessary to have a baseline for comparison between the two groups of subjects.

Secondly, one objective of the research was to examine the extent to which theoretical perspectives on criminality and delinquency provided 'available ideologies' from which the lay theories of delinquency and need were derived and employed by the subjects in the course of practical decision-making about children. The danger of a researcher simply identifying the existence of such ideologies, after they had undergone the metamorphosis of absorption into lay theories or ideologies, without involving the subjects themselves, is that he does in fact impose structure and organisation on the cognitive frameworks of his subjects. He thereby lays himself open to criticisms similar to those used against the integrating quality of statistical analysis.

Thirdly, as a direct consequence of the defects identified with 'black box' sentencing research, it was decided that the research should be actor oriented, and in this respect is related to the argument of the previous paragraph. By an 'actor-orientation' is meant that as far as possible in a study of practical decision-making an attempt should be made to assess how the decision-maker reaches a

decision. The importance of cognition in relation to the selection, identification and organisation of information deemed relevant for the purpose of decision-making necessitates a methodology which does more than simply identify what factors were *prima facie* determinants of decisions of a particular kind. Whereas in much sentencing research the factors identified in the background of the offender were treated as independent variables, it could be argued that by adopting an actor orientation the independent variable becomes the cognitive framework of the subject, though the dependent variable, the decision, remains the same. Similarly, an actor orientation is necessary in a research project committed to assessing the extent to which theoretical perspectives on criminality find their expression in the lay theories of delinquency and criminality espoused by those responsible for the identification of deviance or need.

Fourthly, most sentencing research had focused primarily on individual judges or magistrates but there had been few attempts to analyse the nature of collective decision-making. Since there must by law be three panel members present at a Children's Hearing and never less than two juvenile magistrates presiding in Juvenile Court, it is argued that any consideration of decision-making in these contexts must acknowledge the fact that decisions are ostensibly the outcome of a collective process. Whereas research into sentencing by magistrates in juvenile court had on occasion recognised the significance of the 'indefinable human element' the importance of interaction and discussion between magistrates had not been examined though this must undoubtedly have implications for the decision-making process. But an added factor was that since one of the objectives behind the introduction of the Children's Hearing system in Scotland and the further modification of the procedure of juvenile court in England was the promotion of informality, it was also important to evolve a strategy which would allow for some analysis to be made of the interaction and communication in the hearings as a whole. In Scotland especially, as recommended by the Kilbrandon Report, the intention was that the informal proceeding of the Children's Hearing would allow parents and child to be more involved in the decision-making process. Consequently, to have tried to compare differences in decision-making between the respective systems without adopting

a strategy which would accommodate a consideration of the relative contribution to the decision process of parents and children would have been to have ignored the very context in which decisions were made.

Finally, children's hearings and juvenile courts do not operate in vacuo but are part of a network of agencies providing specialist skills and facilities which not only serve to inform the decisions made by panel members and magistrates but which may also be involved in the actual implementation of that decision. Thus, the availability and nature of the facilities provided by such agencies as social work or social services departments, education departments, psychiatric and psychological services are not without significance for the making of decisions in respect of children. Because of the potential influence of the services available in different areas, it was decided to conduct the research in complete administrative areas in an attempt as far as possible to control for national variability in services and facilities provided. This would also have the added advantage for the purpose of examining collective decision-making. By concentrating on complete administrative areas, this meant that the samples of subjects would only be drawn from one juvenile panel and one juvenile bench. In this way, the different permutations of subjects who presided at Children's Hearings and Court Hearings would only be composed of individuals who were members of the respective panel or bench. Since a prime objective in the research was to examine collective decision-making, a sample of subjects drawn from a mother population in terms of a particular sampling frame, perhaps in an attempt to introduce an element of 'representativeness', would have meant that the samples were composed of subjects from different administrative areas. Drawn from different areas, some of the subjects could not therefore have possibly presided at the same Children's or Court hearing as their colleagues since this would have been ruled out by the administrative arrangements peculiar to particular areas.

In view of these constraints, the research could not have been conducted employing a single methodological strategy but demanded a number of strategies. Though the researcher had been initially attracted by the merits of phenomenological sociology and ethnomethodology, as revealed in Cicourel's work, this proved to have

limitations for this research. As will be explained, though the original intention had been to employ a phenomenological framework as the basis for the design of the methodology, the methodology actually employed cannot be said to be truly phenomenological. But this does not mean that phenomenological sociology played no part in the design of the research; its influence was twofold. Firstly, it did have an influence in the design of appropriate strategies for a project committed to an actor-orientation; and secondly, it highlighted the relationship between theory and data, methodology and results by revealing how comments on or accounts of the world were inextricably linked to the constitutive rules employed by actors, whether subject or researcher, which made such comments or accounts possible.

Theoretical Foundations

A characteristic feature of sentencing research was that in the main it had been theoretically barren, perhaps with the exception of Hogarth's and Hood's later research both of which acknowledged the relevance of psychological literature as a source for appropriate theoretical statements and formulations. At the planning stage of this research, it was decided that a sound theoretical framework was necessary in which to ground an examination of decision-making especially because of the commitment to an actor-orientation. An advantage of the type of research into sentencing which sought to relate factors in an offender's background with the decisions made was that there was little necessity for theoretical assumptions to be made clear prior to the undertaking of the research. But a consequence of this was that statements and conclusions were made about sentencing which were not supported by the different methodologies adopted. This was particularly obvious in relation to research which explained disparities in terms of some indefinable human element when they could not be accounted for in terms of the different characteristics in offenders' backgrounds. (See preceding chapter.)

Though examination of disparity as such is not an aim of this research, a prime factor in the eventual nature of the strategies evolved for the present project was the intention of being able to make statements about and comparisons of 'how' decisions were made, statements

on the basis of and comparisons based in a methodological framework adequate for that purpose. The methodology was thereby determined by the desire not simply to analyse 'what' questions, about which factors influenced or were related to which decisions, but also 'how' questions, relating to the process by which decisions were made. In other words, this project was designed to examine differences in decision-making and not just to consider the different characteristics or factors associated with decisions made in the respective systems.

Originally, the researcher had planned to adopt a framework derived from the phenomenological or interpretive sociology perspective but in view of the constraints imposed on the research by what were argued to be the requirements of this project, this proved unsuitable for a number of reasons.

Whereas a phenomenological or ethnomethodological approach would certainly allow for the 'tacit assumptions' or 'background expectancies' of different personnel involved in the decision-making process to be revealed, and consequently what implications these had for the processing of delinquents, it would not have allowed for easy comparison of two different systems of juvenile justice. This was especially so because of the intention to examine the nature of interaction and communication between a number of individuals involved in making a decision and to acknowledge how diverse factors influenced such a decision. Though interpretive sociology criticises the positivistic bias of much sociological reasoning and rejects the methodologies associated therewith as being inappropriate for the study of social phenomena, it is singularly lacking in the development of an alternative and more appropriate methodology. The ethnomethodological enterprise as its literal derivation signifies, seeks to make 'rationally visible' the processes and basic rules which makes the accomplishment of social interaction or behaviour possible. It seeks to do so in such a way as to make the account of that behaviour compatible with the terms which actors or members would themselves use to characterise that behaviour. An analogy that is appealing in its contribution to the understanding of the ethnomethodological enterprise is that of the ethnomethodologist as an anthropologist at home. That is, the ethnomethodologist seeks to

understand social behaviour, usually taken for granted in his own culture, in the same way as the anthropologist seeks to understand and explain the behaviour of those in alien cultures. Following the Schutzian postulate of adequacy then, any account of social behaviour must be made in such a way as to be compatible with the account of it given by those whose behaviour was the object of analysis. One of the failings, as we have seen, of positivistic sociology was that sociological concepts were second order constructs; that is, they are constructs of the constructs used in commonsense and lay reasoning. The irony of the development of ethnomethodology is however that, despite its commitment to rendering accounts of the world in language compatible with that of lay actors and members, the language used is not only highly technical on occasion but is also sometimes remarkable for its opaque quality.

But for present purposes, an important disadvantage of interpretive sociology was that there was no definitive statement as to how best one might render the processes which make interaction possible, rationally visible. There are then two problems.

Firstly, the postulate of adequacy associated with interpretive sociology comes close to suggesting that the only accurate accounts of social interaction can be given by the actors involved in the interaction. The accuracy of any account given by a researcher is then theoretically dictated by its compatibility with actors' accounts. But in some social situations, and perhaps in more cases than not in which more than one actor is involved, there may well be disagreement between the participants as to the accuracy of any account given of that social process. Moreover, it may not always be the case that actors themselves are aware of the tacit assumptions or background expectancies which allow them to accomplish the behaviour. Bearing in mind that this research set out to subject to analysis decision-making in hearings involving as many as six or seven people, and involving information gleaned from a variety of reports and other sources, the possibility of disagreement over the accuracy of any account as to how a decision was accomplished is far from remote.

The second difficulty relates more to the lack of methodological statement. Perhaps the greatest contribution made by the

interpretive perspective is that it has directed attention to the basis of professional theorisation as well as lay theorisation. (See Schutz 1967; Giddens 1976) That is, not only does it focus on how lay actors account for or make sense of the world in lay terms but also how professionals such as sociologists account for the world in sociological terms. In accordance with the notion of 'reflexivity', interpretive sociology is committed to revealing the constitutive rules which make both lay and professional accounts of the world possible, thereby eroding the distinction between the lay or professional sociologist. Any account of the world whether lay or professional is then the product of the very processes which make the account possible. That is, the truth of such accounts lies not in their correspondence to some feature of an external or preconstituted world but rather is inextricably linked to the way in which (the method) the account was accomplished. Truth is then 'methodic' in character and no longer referential. Hereby, the ontological and epistemological gap between theory and data is bridged, since there are then no data in the world that are independent of the theoretical assumptions or prescriptions guiding the researcher. But though this approach does warn of the dangers of dissociating accounts or conclusions from the way in which they were made, in other words ignoring the methodic character of accounts, interpretive sociology fails to postulate a methodology adequate to meet the strict demands of its maxims. The continual need to make visible the auspices under which research is made possible or accomplished in itself gives no indication of the methodology adequate for this purpose, and ethnomethodological studies are themselves not exempt from this examination made in terms of the ethnomethodological critique. What may then be referred to as an 'ethnomethodological spiral' is established. That is, once an ethnomethodological study of ethnomethodological studies is undertaken, this theoretically demands an ethnomethodological examination of an ethnomethodological examination of an ethnomethodological study which in turn theoretically demands But for the purpose of this research, though interpretive sociology was not without significance for the project as a whole, the fact that no positive or constructive attempts had been made to devise an appropriate methodology deprived this perspective of complete methodological relevance.

Personal Construct Theory

Whereas interpretive sociology provided no methodological prescriptions, Kelly's (1955) theory of personal constructs is actually supported by

" a number of techniques of investigation and measurement, which are closely tied to many of the assumptions in the main body of the theory."
(Bannister and Mair 1968, p.32)

From the description of the essential features of personal construct theory it will be seen that it reveals many similarities with phenomenological or interpretive sociology. This is not totally unexpected as the traditions in which both Schutz and Kelly worked were ultimately derived from Husserl's attempt by the phenomenological method to provide a presuppositionless philosophy. The advantage of construct theory however was seen by the researcher to lie in the availability of an associated body of investigative and measurement techniques.

In developing personal construct theory, as Schutz had sought to do in relation to a social phenomenology, Kelly avoided the groundlessness and transcendentalism associated with pure phenomenology in its Husserlian form. Yet, he also avoided the extremes of behaviourism which, as discussed above, were displayed in the psychological tradition whose roots were to be found in Humean empiricism. For Kelly, man was to be seen as an agent in the real sense of that word in that human nature was not merely determined by environment nor subject to physical or biochemical forces. This is indicated in the fundamental postulate of construct theory that

" a person's processes are psychologically channelised by the ways in which he anticipates events." (Bannister and Mair 1968, p.12)

The theory embodies a conception of a person as essentially anticipatory and predicting and not just responding to forces outwith his conscious control. A person can only anticipate events through his system of personal constructs and it is in notion of a 'construct' that the key to the theory as a whole is to be found. Though Kelly did not deny the existence of a real or absolute world, of more importance was his claim that to operate in the world man has to make representations of it which he can then test in the course of

his experiences in it. By 'representing' or 'construing' the world is meant the attempt to relate the pre-analytical diversity of phenomena into conceptual categories. It is through these representations or constructs that man gains knowledge of and acts in the world and since they are conceptual categories which do not simply refer to an external absolute reality they are subject to change in accordance to the experience of the individual. This is necessitated by the heuristic and pragmatic character of constructs. In another context, a similar point has been made by Vaihinger who suggested that

" it must be remembered that the object of the world of ideas as a whole is not the portrayal of reality - this would be an utterly impossible task - but to provide us with an instrument for finding our way about more easily in the world." (1924, p.15)

"The world of ideas is an edifice well calculated to fulfil this purpose; but to regard it as a copy is to indulge in a hasty and unjustifiable comparison." (1924, p.16)

Similarly, in personal construct theory, the events which man experiences cannot be absolutely apprehended but can only be conceptualised or appreciated by the constructions placed on them. Since events are not intrinsically meaningful, they are made meaningful or have meaning imposed on them by the individual only by reference to the system of constructs within which he subsumes them. Interpretations of events in the world are then subject to the differing construct systems employed by men to make sense of a world in which a degree of prediction and anticipation is a distinct advantage.

A construct is then a means by which similar and related phenomena can be conceptually linked and by which, on the other hand, dissimilar phenomena can be conceptually segregated. The attributes of 'likeness' and 'difference' logically associated with the notion of a construct, at the same time reveal the bi-polar nature of a construct as employed in Kelly's theory, and also identifies how it differs from the use of 'construct' in interpretive sociology. Though in the latter context a construct certainly implies differentiation of dissimilar and association of similar phenomena, it is not considered to be bi-polar in the way that it is in personal construct theory. Bi-polarity in constructs, as exemplified by the construct black-white, does not imply that a construct simply has affirmative and negative poles. As has been remarked elsewhere -

" Kelly insisted that constructs could be used in a scalar mode, while being bi-polar in origin. Thus, the famous 'shades of grey' stem from the construct black versus white." (Bannister and Fransella 1971)

Similarly, the two poles of a construct are not always consciously employed since many constructs may have only one visible pole, the other being 'submerged'. As will be discussed later, this was to have important implications for the design of one of the elements of the methodology of the present research.

But where personal construct theory does resemble interpretive sociology is in its presentation of a theoretical framework whose explanatory potential is directed not only at the psychological processes of man qua man but also man qua scientist or psychologist. Indeed the very reflexivity required by the theory means that personal construct theory is itself a form of construing which can be accounted for by personal construct theory. The basis of theorising of subject and psychologist is examined under the precepts of the theory. Thus, again, as in the sociological form of phenomenology, the onus is on the researcher to be aware that the constructs he employs in making sense of an individual's behaviour, though different from those available to the subject, are not necessarily any more authoritative. An assumption that Kelly makes is that

" whatever nature may be, or howsoever the quest for truth will turn out in the end, the events we face today are subject to as great a variety of constructions as our wits will enable us to contrive." (1970, p.1)

This he then refers to as constructive alternativism whereby events may be construed in a number of ways by being subsumed under different construct systems amongst which may be included those of individual psychologists or different psychological perspectives. A merit of the theory which has direct relevance for this project is that though it was established in opposition to psychological determinism, the heuristic value of determinist accounts of behaviour is not rejected outright. In accord with the precept of 'constructive alternativism' personal construct theory is but one way of construing a world which may be construed in terms of other psychological theories and also the theories of lay men. Personal construct theory does not deny the 'truths' provided by other construct systems and reflects an acceptance of the 'methodic' character of truth associated with interpretive sociology. (See Blum and McHugh 1971.)

Moreover, there are clear implications for a project which seeks to examine the extent to which decision-makers in two systems of juvenile justice ascribe responsibility for delinquent behaviour. Personal construct theory makes, and is not required to do so, no definitive commitment to a view of human nature as being either 'free' or 'determined' since 'free' and 'determined' are themselves the opposite poles of a construct. The free-determined construct is then a means of interpreting behaviour, whether in scientific or lay terms, and subjects are then free or determined only with respect to the standpoint or construct system employed by the observer. Thus, the theory avoids both an overdetermined view of man and also the doctrine of unlimited free will by postulating that man's contact with the world is mediated by the construct system he has evolved, whether he be experimenter or subject. Though the 'frame of relevance' (Asquith 1977) of the experimenter and subject may be different, the basis of theorisation is essentially similar in the employment of a system of constructs.

Kelly originally devised the Role Construct Repertory Test to elicit construct systems, and this provided the model for later variations and developments, especially the Repertory Grid. In its original form, the subject was asked to supply the names of a number of people and who occupied specified roles, e.g. mother, father, daughter. These were then grouped in permutations of three and for each grouping, the subject was asked to indicate in what way two of the named individuals were alike and different from the third. The resulting 'grid' is then analysed to establish the number and nature of the constructs employed by an individual in making judgments about others. The Repertory Grid differs from the original in that it allows investigation not only of the nature and numbers of constructs but also examines the relationship between constructs and their hierarchical status. (Bannister and Mair 1968) A basic consideration for this research was that the Repertory Grid and its original model, the Role Construct Repertory Test, was that they 'allow for the use of many different types of elements, constructs and scoring systems'. (See Bannister and Mair 1971) Whereas the elements employed in the more traditional form of the Repertory Grid Test were the names of people known to the subjects, others have employed sets

of pictured situations (Ravenette 1970); and though in its original form the test was used to elicit constructs, the provision of constructs, or their word labels, by the researcher is also documented. (Bannister and Fransella 1971)

Development of instruments and pilot study

Because it was intended to adopt an actor-orientation, we considered it important to involve personnel from the respective systems in the design of the instruments, and to gain further first-hand experience of the operation of juvenile justice. This was necessary in order to define instruments that required to be 'subjective' rather than 'objective' and which also, in Kelly's terms were to be 'life representative'. Consequently, the development of appropriate instruments has to be discussed in the context of the small pilot study conducted in England and Scotland. This involvement of personnel from the two systems in the design of the instruments was also continued after the field-work was completed when the researcher attended day conferences in both the study areas. This allowed for the presentation and discussion of some of his preliminary findings with both panel members and magistrates, a process which not only acknowledged the co-operation afforded by both groups but at the same time which had significant influence on the analysis of the data.

It had soon become obvious that what were seen to be the methodological requirements of the research could not be met adequately by adopting one particular technique. A number of techniques were then devised in a strategy which involved a considerable degree of what has been referred to as 'methodological triangulation'. (Denzin 1978)

The main techniques, discussed below, were

- (i) Case studies,
- (ii) Case reports,
- (iii) Interaction schedule,
- (iv) Interviews.

(i) Case Studies

The first stage of the research was designed primarily to compare the extent to which different theoretical perspectives on

criminality and delinquency provided available ideologies which were manifested in the working frames of relevance of panel members and juvenile magistrates. The main objective was to compare the extent to which a treatment philosophy or a judicial philosophy provided a conceptual framework for decision-making by panel members and magistrates respectively. But an added purpose was to compare the relative influence of each of the identified theoretical perspectives on delinquency whose premises rested on deterministic assumptions. A dual requirement of this element of the research then was that it be methodologically adequate to examine the ideological roots of the lay theories of delinquency employed by the decision-makers but also provide a baseline for comparison between panel members and juvenile magistrates. For these purposes, it was decided to use a number of case studies, containing basic information about an offender's background and the offence in which he was involved.

The technique associated with personal construct theory, especially the Repertory Grid, have been subjected to many variations and modifications and by using case studies, it was possible to utilise construct principles in designing the cases themselves. In trying to examine the differences in decision-making between personnel in two different systems of juvenile justice, the use of case studies, for the purposes of this stage of the research, eliminated the influence of technical rules and regulations which would apply to actual cases. At the same time, as Hood has commented, (1972) the use of case studies introduces a further degree of control over the variability in information relating to specific cases. One argument, however, against the case study method is of course that it is a technique which is artificial in the sense that it removes the subjects from their normal decision-making context, thereby ignoring the 'situated aspects' of decision-making. (Hood 1972; recognised this.) Acknowledging this caveat, the researcher also intended to examine decision-making at actual hearings and accordingly later describes the methods by which this was achieved.

But in terms of 'life representativeness', the case studies could be themselves devised in such a way as realistically to resemble documents such as social enquiry reports. Towards this end, the researcher, who had had practical experience of writing social enquiry reports on

children, spent some time reading a considerable number of reports made available to him by the Reporter to the Children's Hearings in the study area. Though each case study was to embody basic premises of the different theoretical perspectives identified earlier in this thesis, (see Chapters II and III) they were to be administered in a way that would not be too removed from the presentation of reports to the subjects in the making of decisions in actual cases.

In the case studies, the basic assumptions of each of the different types of causal explanations (the psychoanalytic, biological, environmental, processual and behaviourist) were embodied in information relating to the child's background; in addition, this was balanced with information about the offence in which the child had been involved. (Thus, what we have referred to as a more judicial or legal ideology was also presented.) Five offences were depicted and were varied in terms of the type of offence in which the child was involved and its seriousness.¹ To control further for differences in cases, as in the research as a whole, only boys were referred to in the case studies. Copies of the case studies employed are included at the end of this thesis. However, in anticipation of our later discussion we now present a brief description of what each case study contains.

Each of the case studies then were based on (a) a 'judicial' philosophy by which we mean a perspective on delinquency control in which such considerations as the personal responsibility of the offender and the consequences of the act are important; and (b) a 'welfare' philosophy in which the social, personal and environmental characteristics of the delinquent are more important considerations. These two models are obviously not mutually exclusive as the history of juvenile justice has indicated. And as we shall argue later in this thesis in terms of the frames of relevance adopted by an individual they are not easy to separate conceptually. For the purpose of the thesis, each study contained a description of an offence and a statement of the social, personal and environmental characteristics of the child. Each case study was followed by a list of statements relating to 'welfare' factors derived from the respective causal theories we discussed and also statements relating to the child's personal involvement in the offence, the nature of the resultant harm, his awareness of right and wrong, his awareness of the consequences of his action and on a broader level, the need for social protection. Copies of the Cases Studies are contained in the Appendices.

1. See Appendix V

A decision had then to be made about how the case studies could be best administered, and there were a number of options available. As suggested earlier, whereas Kelly's original test has in fact sought to elicit constructs, a number of later versions allowed the researcher to provide the constructs or the word labels by which the constructs were signified. (See Bannister and Mair 1968; Bannister and Fransella 1971) Similarly, because both poles of a construct are not always readily identifiable, some versions of the test have been administered in which only one pole of the construct was actually presented. For the purposes of this project, the following method was employed in this stage. After each of the five case studies which were presented to the subjects, ten statements were listed, all of which were derived from the case study itself. Of the ten statements, reflecting the balance of information in the case, five referred to the theoretical assumptions of the perspective embodied in it; the other five referred to the factors surrounding the offence and the child's involvement in it. That is, each case study was followed by a list of statements divided equally between 'welfare/determinist' factors and 'judicial/responsibility' factors. As the intention was to assess the extent to which judicial or welfare factors would be important for the purpose of decision-making, the subjects were then asked to indicate how important different factors were. They were asked to indicate the three most important factors, in order, and the three least important factors, again in order. Over the five case studies the subjects were therefore required to rate in terms of importance, 50 statements, half of which were 'welfare' statements and half 'judicial' statements.

That statements were presented after the cases had been considered renders the method liable to the criticism that constructs are thereby not elicited but are rather imposed by the theoretical assumptions underlying the researcher's objectives. Nevertheless, basic considerations influenced the choice of this method. There had of course been the option of using the Role Construct Test or its later version, the Repertory Grid. However, this would have meant that juvenile magistrates and panel members would have been required to make judgments about cases by assessing the differences or similarities of cases in groups of three, thereby adding to the artificiality of the task.

There were three main sources of justification for the adoption of the preferred method. The first basic consideration that influenced the use of the method characterised above was that by presenting statements after the case study, only those factors would be judged important which were directly relevant to the major hypotheses of the study. Secondly, it also meant that the study could be comparative by asking the subjects to consider similar factors in respect of their relevance for decision-making. Free choice would have made comparison difficult, making the analysis of the resulting responses extremely complex by introducing extraneous factors which were controlled for by this more economical and focused method. Thirdly, and logically related to the second consideration, the researcher was interested in decision-making by individuals who occupied specific roles within the respective systems of juvenile justice.

However, an alternative was adopted in the pilot study, which we shall describe later, in which, briefly, a number of the subjects were presented with the same case studies as their colleagues but without an accompanying list of statements.

(ii) Case Reports

Nevertheless, it could not be denied that one drawback of the case study method was the fact of its being abstracted from the real situation of decision-making as it occurred in Court and Children's Hearings. Moreover, what were seen to be the requirements of this research demanded that an attempt be made to supplement the case studies with some means of examining actual decisions and decision-making. The development of the Case Reports and the Interaction Schedules was an attempt to do so.

We have already argued that previous research into sentencing generally tended to ignore how information was selected as being relevant for the purpose of decision-making. 'Black box' sentencing research had especially failed to acknowledge the role played by the interpretive capacities of sentencers though in many instances conclusions were drawn about the influence of the human element on sentencing decisions. But sentencing research had also failed to consider the influence of sentencers on each other's behaviour when the decision, theoretically at least, was the outcome of discussion

between a number of magistrates. The Case Report Form was devised so as to allow conclusions to be made about how panel members and juvenile magistrates respectively judged information, and as far as possible to allow the researcher to make some comment on the collective nature of decisions, an objective which also involved an 'Interaction Schedule'.

Though we obviously cannot deny that known information about an offender is influential in making a decision as to how to deal with him, information is not intrinsically meaningful or relevant per se. It is only meaningful and relevant when it is treated as such by those responsible for making the decision. The search for those factors, either relating to the offence or background information, which can be said to be determinants of the resulting decision has then to be conducted in such a way as to allow the researcher to examine how the information was interpreted and for what purpose. Thus, the important questions relate not simply to what information was used but also how and why it was used. In this respect, to appreciate decision-making, and not merely analyse decisions, it is important that the subject has the opportunity of indicating what influenced him in making a decision, and what was for him relevant information. A fundamental logical 'link' between information and a decision, as we have argued earlier, is the reason that the decision-maker gives for making the decision that he did. Though a number of people may employ the same information to reach what prima facie seems to be a similar decision, once the reasons for a decision have been established, it can be appreciated that very different decisions have been made. Since the underlying logic to this project was to consider the relative influence of welfare or judicial factors on decision-making in respect of children who commit offences, the difficulty of conceptually separating information relating to children's needs and that relating to the offences committed meant that it was therefore important to consider how panel members and magistrates interpreted information.

But decisions are subject to a number of constraints other than the availability and quality of information on which decisions may be logically based, and these constraints are of two types. Firstly, decisions may be restricted by the statutory requirements governing the making of decisions about children who commit offences. In a

similar vein, Green had also postulated that 'the statutory guide to the relative gravity of the various offences exerts a pronounced effect upon variations in sentences'. (1961, p.32) Though our purpose was not to examine decision-making as such, the importance of statutory restrictions on decisions had to be acknowledged. Secondly, but just as importantly, decisions may be further restricted by the availability or non-availability of suitable resources by which appropriate treatment measures can be carried out. The principles underlying individualised treatment require that decisions be made in terms of offenders' needs rather than in terms of what he has done. Consequently, since offenders' needs are likely to vary considerably from offender to offender, a number of different types of facilities are necessary to allow treatment measures to be realistically implemented. Where adequate resources or a variety of resources are not available, decisions cannot be implemented and the non-availability of resources if known to the decision-maker, will necessitate that his decision be tailored accordingly.

Bearing these considerations in mind, the following method was devised to examine decision-making in respect of a number of cases appearing before Children's Hearings and Juvenile Court. In its original form, the Case Report was a single sheet on which were listed a number of factors which may have been taken into consideration in reaching a decision about children who had committed an offence. The subjects were to be asked to indicate, by placing a tick in the appropriate place, how important were certain factors. For example, where the child's relationship with his father was considered to have been important, it would have added to the analysis of the use of information to have been able to allow the subject the opportunity to make some judgment of the factor. Thus, a child's relationship may be an important factor for making a decision and what we sought to analyse was the extent to which different factors were treated as important by magistrates and panel members. It was hoped that this simple approach would allow for some methodological progress to be made in research into decision-making unlike much sentencing research which had ignored which factors were relevant for the subject and how he judged those factors.

At this time, the factors were not organised on the Case Report into different sections as they were to be in the later version, but four main categories of information had been presented by the researcher. Firstly, there were the different reports available in relation to which it was considered important to have some overall assessment of their importance for decision-making. Secondly, there were the 'background' or 'welfare' factors which, though less in number, were derived from the different theoretical perspectives in the case studies. They had to be reduced in number to keep the form in manageable proportions, and though the overall objective of the research was to assess the relative influence of 'welfare' or 'judicial' factors, no definitive conclusions could be drawn from this stage of the research about the individual theoretical perspectives. Thirdly, there were the 'judicial' factors themselves as employed in the case studies but supplemented by information relating to the child's previous offence behaviour and previous contact with the juvenile justice system. Lastly, there was a residual category in which different types of information, which could not readily be incorporated into the other categories, were presented. Opportunity was also made available for the subjects to include factors which had not appeared on the Case Report.

After the list of factors, there were a number of questions which specifically focused on the reasons given by the panel member or juvenile magistrate for his decision, whether he agreed with it, and if not, why not and what would his decision have been.

In this way, we could examine the factors which were important and in what way they were important to the subject and also elicit his reasons for his decision. Though this could not be called phenomenological methodology, the design was nevertheless influenced by the phenomenological notion of intentionality. The primary methodological objective had again been to evolve a means whereby the frame of relevance of the subject would not be completely dominated by that of the researcher.

(iii) Interaction Schedules

A major disadvantage of research into sentencing is that there has been little attempt to provide information about what happened in court during the course of a hearing. The dangers associated with

explanations of sentencing behaviour based on information extracted from official records alone have already been commented on, (Hogarth 1971; Hood 1972) but few researchers have examined the process of decision-making in the hearing of a case. Though Hood (1972), for example, recognises the limitation of his games theory approach, which he argues needs to be supplemented by information collected at court hearings, this actually occupies a minor part of the research. Others, as we have noted, even suggested that by having no knowledge of the courts and the hearings the researcher could in fact benefit by being 'detached'. (Mannheim et al. 1957) Even Hogarth, whose work was theoretically based on a phenomenological framework, derives his data from interviews, questionnaires and sentencing study sheets, and ignores altogether the nature of the discussion and interaction which provides the context for the hearing of a case.

The Kilbrandon Report, on which the changes introduced in Scotland by the 1968 Act had been based, had recommended that Children's Hearings be a more informal affair than the system which had previously existed in order that parents and children might themselves play a greater part in the decision-making process. Similarly, though the 1969 Act in England had retained the juvenile court structure, there were recommendations made that the formal court hearing in respect of children should also become a more informal affair. And again to return to the underlying logic of this research, which has as its overall aim an examination of the relative influence of 'welfare' and 'judicial' factors, an analysis of the discussion of information and the sources of information in the hearing itself would bring an added dimension to a study of the process of decision-making. Thus, a method had to be devised by which both the content and form of decision-making could be studied. By content is meant the nature of the discussion in relation to a case in a hearing; by form is meant the flow of discussion and communication between the different individuals involved in the decision-making process.

To obtain this kind of information in the hearings, the original intention had been to tape record the hearing of specific cases and then analyse the verbatim transcripts. But as permission could not be given by the Reporter of the area in Scotland where the main study was to be conducted, an alternative means of analysing

the hearing transactions had to be found. As it turned out, however, the main study area in England was one of the few courts where the hearings from each courtroom were taped as a matter of course. But for comparability, the fact that in one of the study areas a tape recorder could not be used meant that it was not appropriate for it to be used in the other. A simple alternative was that the researcher could attempt to write down as much of the discussion as he could. But the experience of the researcher at hearings led him to believe that this was not feasible due to the wealth of information discussed and the quick interchanges between the participants. After some deliberation, it was decided to use some form of interaction schedule on which to base the analysis of both content and form of the interaction in hearings. The Bales *Interaction Analysis* (1950, 1951) was considered but it suffered from a number of limitations which made it unsuitable for this research.

Firstly, the Bales method of interaction analysis was rather limited in the scope and kind of information it could deal with. Secondly, it was not particularly suited to examine the major hypotheses of the study. Consequently, without rejecting the concept of an interaction schedule, one was designed which was particularly suited to examining the major hypotheses that have been already stated. The main criteria governing its design were that it should be relatively simple to administer but at the same time be capable of dealing with as much information from a discussion as possible. Moreover, in a research study of this type, with its limited resources, such a schedule would have to be completed by the researcher himself who would thereby also have the opportunity of being a participant observer at hearings. Any analysis of the data collected could then be improved under the influence of more qualitative information.

A list of factors which might possibly be taken into consideration in the course of a hearing was drawn up, much along the lines of the list of factors in the Case Reports. In the original Interaction Schedule, there were 39 factors included, again relating to the four categories employed in the Case Reports, viz. Report, Welfare, Judicial and Residual categories. Since the list was in no way considered to be exhaustive, the schedule was designed so that information which was discussed but did not appear on the schedule could accordingly be included in the appropriate category. Alongside

this list of factors, in order to complete the grid, three columns were outlined, one for each of the panel members or magistrates presiding at a hearing. The fact that there were on occasion only two magistrates on the bench in juvenile court made no material difference. The middle column was reserved for the chairman. Thus, we had a grid as in Fig. a.

Fig. a.

		A	B	C
Factors	1			
	2			
	3			
	4			
	5			
	.			
	.			
	.			
	39			

Had the intention been only to analyse what panel members or magistrates discussed in hearing a case, then it would have been a straightforward process of indicating by a tick or some other symbol what factor had been discussed by which subject. For example, if 'child's relationship with father' had been factor 1, and subject B had discussed this, then it could be indicated by an appropriate symbol in box B 1. But the analysis was not just to be of what panel members and magistrates discussed but rather of the nature of the discussion as a whole. That is, the analysis was to include the contribution, both in form and content, of the other participants in the hearing.¹

To achieve this, a system of coding was constructed using both capital and small letters, by which the other main participants could be identified. The symbols employed for the respective participants were as follows:

-
1. What the grid does not record is any interaction which does not involve either a panel member or a magistrate. The exclusion is not because this would be of little interest but rather because such interaction e.g. between parents and child occurred only rarely in both the pilot and main studies.

Father:	F and f	Police prosecutor:	P and p
Mother:	M and m	Clerk of Court:	CC and cc
Youth:	Y and y	Reporter:	R and r
Social Worker:	SW and sw		

The reason for the use of both capital and small letters was that it provided a means by which we could identify whether that individual made a statement about a particular factor or whether a statement had been addressed to him. Where capitals were employed, this signified that the individual made a statement and where small letters were used, this meant that the individual had been addressed about a particular factor. Depending on the position of the symbol on the grid, that is, depending on which column and opposite which factor it was located, what had been discussed and between whom could be readily identified. For example, as in Fig. b., if the 'child's relationship with its mother' had been factor 5, and the social worker had addressed the chairman about this, then in box B5 would have been noted 'SW'. Had the chairman, however, addressed the social worker about this then in the same position would have been noted 'sw'.

Fig. b.

		A	B	C
Factors	1			
	2			
	3			
	4			
	5		SW sw	
	.			
	.			
	39			

The schedule was also devised to cater for discussion between panel members or between magistrates who were coded simply according to the column in which their name was noted. For example, if the chairman addressed the person named at the head of column C about the same factor, in B5 would now appear 'c'. If the person named at the head of column C addressed the chairman about the same factor, then in C5 would appear 'b'.

By repeating this everytime a statement was made, a matrix could be constructed which therefore provided, albeit in coded form, a description of both the form and content of the hearing. However as far as possible, it was decided to record verbatim the concluding remarks of the chairman of Children's and Court Hearings. Though the description of the coding here presented may appear rather cumbersome, it did in fact turn out to be, with some modification, a relatively simple but workable means of providing information which could then be analysed for the purpose of examining the major hypotheses of the study.

(iv) Interviews

Given the time constraints in conducting the fieldwork and the number of different approaches adopted in the empirical research, it was impossible to interview all the panel members and magistrates involved in the study. Nevertheless, we thought it important to supplement the material collected in other ways with at least a number of interviews. Thus, the intention in the main study was to interview twelve panel members and magistrates about topics and issues relating to their roles in the respective systems of juvenile justice. The material collected was used as a means of supplementing the findings based on the case studies, case reports and the interaction schedules.

The Pilot Study

Ten panel members and five juvenile magistrates, drawn completely at random from two areas where permission had been given, but not the main study areas, co-operated in the pilot study. This was undertaken with several objectives in mind. Firstly, the researcher wanted to ensure that the instruments to be completed by the subjects, the Case Studies and the Case Report Form, were comprehensible. Secondly, that the case studies presented might be realistic portrayals of the types of cases that the subjects might encounter, it was intended to allow them an opportunity of commenting on their validity. Further, it was intended to modify the statements presented after the case studies where the subjects' responses of the importance of any particular statement were over consistent. Thirdly, the pilot study offered the researcher the

opportunity of both familiarising himself further with the coding grid associated with the Interaction Schedule and at the same time testing its feasibility. Lastly, the lists of factors included in the Case Report and the Interaction Schedule were to be modified where necessary to include more relevant, and conversely exclude less relevant, factors.

We have seen that in its original form the Role Construct Repertory Test was designed primarily to elicit constructs from subjects, but that in later versions constructs, or their word labels, were actually provided by the researcher. Similarly, whereas the original test required that judgments be made of known people, developments of Kelly's original concept employed 'pictured situations' as the elements to be judged. In our study, where the elements were in the form of case studies and where the statements were provided by the researcher, it had been determined from the outset that it should be possible at some stage in the design of the instruments that panel members and magistrates would nevertheless be able to make some comment on their design. For this purpose, the case studies were administered in two ways in the pilot study.

Though fifteen people in the pilot study received the case studies, only ten of these received them in the form intended for the main study, i.e. with the ten statements provided after each case study. The remaining five also received the case studies but without the list of statements, and instead of being required to rate ten statements in terms of their importance, this small group were required to do two things. They were asked to list in order of priority, those factors in the case studies which they considered to be important for the purpose of decision-making. Also, they were asked to indicate what information had not appeared in the case study which they would have wished to allow them to make a more informed decision. In this way by presenting case studies without the lists of statements a comparison could be made of the type of statements chosen by the subjects involved in the pilot study and those presented by the researcher. And by asking for an indication of what further information was required the case studies themselves could be accordingly changed to accommodate the subjects' comments so as to make them a more realistic portrayal of the types of

information generally encountered by panel members and magistrates. There were, however, obvious limits to the changes that could be made because of the specific purpose for which the case studies had been devised, and because they were not designed to examine all aspects of decision-making.

Since the Case Reports were to be completed by individual panel members and juvenile magistrates after the hearing of a case, one important consideration was that they should be capable of being completed as quickly as possible. Though permission had been given to collect information for the research in this way, concern was nevertheless expressed that the organisation and administration of the Children's Hearings and the Court Hearings should not be disrupted by such an exercise. Since Children's Hearings also took place in the evenings, it was imperative that the Case Report Form should not be too time-consuming. As the list of factors was not considered to be in any way exhaustive, the pilot study offered the means whereby its comprehensiveness and validity could be assessed. Moreover, an overall methodological objective was that the data should be collected from the subjects as far as possible, and, initially, it was intended that the researcher would interview subjects, after the Case Reports had been completed, specifically about the decision just reached. But even before the pilot study, the researcher had his own doubts as to whether this was realistic and accordingly accommodated the questions into a self-administered questionnaire which could be incorporated into the Case Report if interviewing was out of the question.

Problems associated with the Interaction Schedule were anticipated as being more straightforward. Again, the pilot study would allow for modifications to the list of factors to be made but it was also intended to afford the researcher the opportunity of familiarising himself further with the coding system devised for this part of the research.

In all stages of the preliminary development of the instruments and the pilot study itself, comment was requested on all aspects of the research not only from panel members and juvenile magistrates but also from other significant personnel in the respective systems of juvenile justice.

Findings

All the case studies were returned from those who had received them for the purpose of the pilot study. There had been no major problems experienced in their completion and reaction from both magistrates and panel members indicated that they did in fact depict cases and present information in a realistic and acceptable manner. It should be noted however that several of the subjects commented on the fact that in a genuine case, their impression of the child himself would play a major role in determining their decision. Whereas this is of course a valid point in that the case study method, as we have discussed, is not subject to the many 'situated aspects' of decision-making, the case studies were neither designed nor conceived for this purpose.

The factors chosen from each case study as being important for those subjects who had received case studies without the lists of statements were encouragingly similar to those presented by the researcher. It was therefore felt that on these grounds alone, only minor modifications to the statements would be required. However, some statements were changed for other reasons. Where the statements had been given after the case studies, one of the statements in Case A had been scored consistently by both panel members and magistrates as being of least importance. Though consistent scoring such as this was not impossible, it was not expected that it would occur. On examining the statement, it was found to be qualitatively different from the others in that it did not simply refer to a factor relating either to the child's background or to the offence committed, but rather made an explicit statement as to why a decision should be made. It was not the purpose of the case studies to examine the reasons for decisions but to consider what kinds of factors would be chosen on which to base a decision. The statement 'An example should be made of this boy' was therefore deleted on the grounds that not only was it qualitatively different from the other statements but also because it disrupted the logic underlying the design of the case studies. A similar statement in one of the other case studies was deleted likewise.

Some other statements were modified simply because they were much longer in comparison to others and it was felt that this was

imposing an undue influence. In view of the comments made by the subjects as to what further information they would have required to allow them to make a more informed decision, modifications were made to the case studies themselves though the information incorporated only meant minor alternations. Overall, it was felt that the case study method posed no real problems and that reaction to it had been such that it could be satisfactorily employed in the main study. Copies of the final version complete with the lists of statements are included in the Appendices.

Changes required in the Case Reports were however of a less minor nature and the need for compromise between the methodologically ideal and practical necessity became rather obvious. Prior to undertaking the pilot study proper, the researcher attended some hearings in the pilot area in Scotland to assess the nature of the demands completion of the Case Reports and being interviewed about cases would impose on the subjects. As we have discussed, one reason for this concern was that Children's Hearings take place in the evenings. Even from these preliminary examinations it was apparent that interviewing subjects after they had been involved in making a decision and after they had completed the Case Report, would have been far too time-consuming. It was felt therefore that the information to have been collected in the small interviews would more appropriately be collected by the addition of a further self-administered section to the Case Report. This was the format that was then employed throughout the case study. To further reduce the demands imposed on the subjects, the researcher also decided to read out the instructions governing the Case Reports.

A total of twenty-four Case Reports relating to eight cases were completed in the pilot study proper. The small number of cases involved, reflected in the number of cases in the main study, indicates the difficulty experienced in obtaining appropriate cases. The peculiar nature of the hearings in England and Scotland did not make for easy or quick collection of samples of suitable cases for the study. Because of the heavy volume of cases dealt with by magistrates at one sitting, up to as many as forty cases listed for one day, they could not be justifiably be asked to complete Case Reports for more than one case. The problem in Scotland was slightly

different but with the similar effect of reducing the number of Case Reports that could be completed at any one hearing. The volume of cases dealt with at a Children's Hearing differed markedly in that on most occasions, no more than five or six cases were heard. Since at the majority of hearings there were not only offence referral cases heard but also cases referred on other grounds, or even for review, the availability of appropriate cases was thereby limited.

The time taken to complete the case reports (which vindicated the decision not to interview as well) varied from 10 to 25 minutes. The fact that some took as long as 25 minutes to complete was in part due to a major difficulty confronted in the design of the Case Reports. In an attempt to have the subjects indicate both which factors were important for decision-making and to have some judgment made of them, they were asked to state whether factors were 'positive' or 'negative'. Positive factors were defined as those factors which were taken into consideration and which seemed to be favourable factors in a case; negative factors were defined as those which had also been taken into consideration but which had been seen to be unfavourable. For example, where a panel member thought that the child's use of leisure had been for instance constructive, this would then be indicated as being a positive factor. Where on the other hand 'child's home conditions' were seen as being unfavourable or poor, then it would be indicated as being a negative factor. Whereas some of the subjects apparently experienced little difficulty with this, some of the more astute and discerning subjects discovered that such a dichotomous category contained a considerable measure of ambiguity. This was mainly because 'positive' and 'negative' could be construed in a number of ways. A factor such as 'good home conditions' could certainly be called a positive factor, but a factor such as 'bad home conditions' was also capable of being conceived as being a 'positive' factor in the sense that it had contributed to the child's offending and general behavioural problems. It had also been remarked that a factor could be a positive influence on a decision whether it was a favourable or unfavourable factor. Thus, 'bad home conditions' might be considered negative in the sense of a negative judgment but positive in the influence it had on the decision.

Whereas the intention had been to allow the subjects to make judgments of actors selected as being important for decision-making, the ambiguity inherent in the positive-negative category, rightly pointed out in the pilot study, suggested that it would not be acceptable for the main study, at least presented in that manner.

The important-unimportant category though comprehensible did in fact prove to be too restrictive and several subjects commented that factors they would take into consideration were not simply important or unimportant. It was argued that some factors were more important than others. Though they all completed the Case Reports, concern was expressed that, because of the restrictive nature of the category, inaccurate responses were being given. After some deliberation, the importance category was changed to the three categories 'Very Important', 'Important' and 'Not Important' with a residual 'Irrelevant' category for those factors which were not taken into consideration. Where factors appeared to the subjects as being irrelevant, this could be indicated by not putting a tick opposite the factor in question. The reason for there being a 'Not Important' and an 'Irrelevant' category was that in some instances it was felt that there might be factors which were not important as such for decision-making but which on the other hand were not completely irrelevant.

As for the list of factors offered in the case reports in the pilot study, comment was made that not all factors would be taken into consideration in a case and that indeed on occasion very few factors would be needed to provide an adequate basis for a decision. However, since the list was to be comprehensive to cover as many of the different factors influencing decisions over a number of cases and not just for particular cases, little change was made to the list itself. The order in which the factors appeared was however modified slightly, mainly for the purpose of analysing the responses, and simply involved grouping the factors together in their respective categories, viz. Reports, Welfare, Judicial and Residual Categories. In the main study, the Case Reports were completed by panel members and juvenile magistrates after they had made a decision in the researcher's presence. By being involved in the administration of the Case Report, the researcher was able to read the instructions to the subjects and to be available should any difficulty have arisen.

But he was also able to ensure that the case reports were completed by each subject individually and not after consultation with his colleagues. In the pilot study, though asked to complete the case reports on the basis of their own impressions of a case, it was obvious from some of the returned forms that there had been a considerable degree of consultation by the subjects in completing them. Since the object was to gain access to the interpretation of cases by individuals and as a group, the presence of the author when they were being administered was necessary to guarantee that the case reports were completed individually.

Fourteen Interaction Schedules were completed by the researcher, eight of which were for the cases for which the case reports had been completed and six of which were for other cases heard whilst he was in attendance at hearings. In the course of the pilot study, as a result of having to attend on a number of occasions to obtain even a small sample of appropriate cases, the researcher benefited by being present at a large number of hearings. Even for the pilot study, he attended as many as 30 hearings from which only eight cases could be used as the pilot sample. This was to be a feature of the research that was repeated in the main study where he was present at as many as 100 Children's Hearings and even more Juvenile Court Hearings. The advantage was that despite the small number of cases in the samples, he was able to familiarise himself with the nature of the different types of hearings and the roles played by the various participants. Though the Interaction Schedule was designed to obtain information about a number of specific cases, his experience in the respective systems of juvenile justice was supplemented therefore by observation at a considerable number of hearings and by discussion with many of the significant personnel.

Whereas the Interaction Schedule did prove to be a very workable instrument and extremely valuable in the absence of any other means of gathering information about the form and content of hearings, it was nevertheless not without a number of limitations. One of the problems with not being able to tape record the hearings was that of not having as full a transcript of the discussion as possible. Since many different areas would be featured in the discussion, it would have been impossible to merely record verbatim absolutely everything. In this respect, the list of factors in the

Interaction Schedule which it was thought might be discussed in a hearing proved invaluable. Since the factors were already on a form, the only recording that had to be done by the researcher was effectively of who was actually in the discussion, the topic of discussion being noted by the location of the coding on the grid. A fairly accurate picture of the form and the content of the hearing could then be obtained, in which the overall nature of the discussion and the relative contributions made by some of the participants could also be noted.

It had been proposed initially that each 'statement' about a particular factor should be noted with the appropriate symbols. Though this had initially seemed a fairly straightforward undertaking, in practice it soon became rather obvious that it was by no means clear what actually constituted a 'statement'. In some instances two or three different references to the same factor could be made in a single sentence and a number of references to different factors could also be made within one sentence. To accommodate the administration of the Interaction Schedule to this contingency, an operational definition was adopted whereby a 'statement' was deemed to be each particular reference made about any factor whatsoever. In this way, it was hoped to add to the data by providing information on the volume of discussion about each factor. Though a crude device in that it could not record the richness of actual discussions leading up to a decision, the interaction schedule did serve as a basis for comparison of two different types of hearing where the means of information collection was otherwise restricted.

After the addition of relevant factors and the reorganisation of the presentation of all the factors, the Interaction Schedule was adopted for the main study. It is to a discussion of the findings derived from the methodological strategies to which we now turn.

CHAPTER VII

CASE STUDIES

For comparative purposes, two complete administrative areas, one in Scotland and one in England, were chosen for the research. The restriction to one panel and one court area then means that no claims can be made as to the representativeness of the areas or of the subjects therein. Indeed, it is questionable whether any area or sample, however chosen or stratified, could ever be what might be called 'representative'. Because the desire is that panel members and juvenile magistrates should be representative of the community which they serve, any attempt to obtain samples representative on a national basis would inhibit the collection of information about the workings of the system in particular areas. Since each area, both panel and court, is characterised by the peculiar administrative and organisational arrangements of social and related services, as well as being serviced by a restricted number of panel members and magistrates respectively, additional variables would have been introduced to an analysis of decision-making. Indeed, the danger of seeking to obtain large samples that are representative of the national scene is that as much information is lost because of the attempt to be comprehensive.

Since we were concerned with the process of decision-making the danger of trying to be too comprehensive would have been to have ignored the peculiarities that exist within different administrative areas. Because the practice of juvenile justice is dependent upon local resources and expertise, and may also be a function of the nature of the delinquency problem, regional differences make it unlikely that a statement about juvenile justice on a national basis could meaningfully be made. Since one objective of the research was to examine situational and collective features of the decision-making process, to have crossed geographical and administrative boundaries would have restricted the kinds of comments that could be made. In simply practical terms, concentrating on particular areas for the purposes of comparative research was also determined by the fact that only one researcher was involved.

However, this is not to suggest that the conclusions drawn from such a small-scale exercise are without significance for the Scottish and English systems as a whole or for the very concept of juvenile justice. The translation of social policy into action is a process whereby the redefinition and interpretation of the formal ideology and philosophy by those responsible for its implementation will be made within the framework of their 'working frames of relevance'. In terms of the present thesis, the empirical section of the study follows on logically from the earlier chapters. We have already examined what we have termed the 'available ideologies' underlying punishment and treatment and have suggested that the relationship between the two is more complex than other researchers have allowed for. The discussion of 'available ideologies' was then used to examine the historical and conceptual development of juvenile justice in both Scotland and England. In the empirical study, we set out to examine how an ostensibly similar philosophy, of treatment or welfare, was realised within different administrative and organisational frameworks, arguing that, though formally the orienting philosophy was one of welfare, this did not preclude the possibility that those working within the respective systems adhered to frames of relevance derived from differing available ideologies. It is from this that the comparative element of our research derives.

To this end, two areas were chosen, one from Scotland and England respectively, to be referred to simply as the panel and court area. The choice was governed by a number of considerations. Firstly, since the intention was to examine decision-making within complete administrative boundaries, given the limited resources available to the researcher these areas had to have a relatively small number of magistrates and panel members respectively. Secondly, since we were to examine the form and content of the hearing process itself, it was again important to have a relatively low number of magistrates and panel members. This was because of the number of permutations possible of panel members at any particular hearing and magistrates at any court hearing. Since we wished to comment, as far as possible, on the collective nature of decision-making we had to be able to relate the data collected from the Case Studies and Case Reports to actual cases.

A brief description of the respective areas now follows.

(i) Scotland: the Panel Area

Early in 1974 approaches were made directly to the Reporter to the Children's Hearings for the panel area who gave his approval, at least in principle, for the research. At his suggestion, a meeting was arranged with the panel members who were to be involved in the research to allow them the opportunity of discussing with the researcher the nature and objectives of the research, as well as the level of involvement that would be required of them. The meeting in fact served the dual function of allowing particular queries to be met by the researcher and, more importantly, of laying a sound basis for the continued co-operation and enthusiasm of the panel members throughout all stages of the research. The part of the research which involved observing hearings and interviewing the panel members was carried out from January until May of 1975, although the case studies had of course been completed by the panel members before that time.

The panel area itself, south of Glasgow, is a blend of heavy industrial towns (the main industry being steel works) in the north-most sector, with a number of rural areas in the southern reaches.

One important difference in the administrative arrangements between the panel and court area was that where^{as} all the court hearings were held in the same magistrates' court, during the day, the panel hearings met at different locations and mainly in the evenings and afternoons. There were in fact four different meeting places for the panels, though any panel member might be required to attend hearings at any of the four venues.

Another important difference between the two groups, i.e. panel members and magistrates, is that because the new system of juvenile justice in Scotland had only recently been introduced (1971) the panel members were all first-time appointments. There had, at the time of the research, been no turnover of membership, though a number of the panel members were in fact about to have their membership reviewed as their three-year period of service (after which membership has to be reviewed) was almost completed. In general, however, and in comparison with the juvenile court system, panel members had less experience and were being offered training programmes which themselves were only in the early stages of their evolution.

From Table 1 it can be seen that there were a number of differences in the patterns of cases referred over time to the Reporter at the national level, and within the panel area itself.

Table a

Reports to Reporter

	<u>Scotland</u>	<u>per 100</u>	<u>Panel Area</u>	<u>per 1,000</u>
1972	22,451	15.8	1,135	11.6
1973	28,448	20.1	1,439	14.5
1974	30,442	21.5	1,771	17.9

Whereas in 1972 and 1973, as well as later in 1974, the number of reports per 1,000 children at a national level was always greater than for the panel area itself, both sets of figures showed an upward increase in the rates of reports to Reporters. The majority of all reports were for boys. Moreover, the number of offence referrals each year increased both at national level and in the Panel Area, as Table 2 indicates.

Table b

Offence Referrals

	<u>Scotland</u>	<u>To Reporter</u>	<u>To Hearing</u>	<u>% to Hearing</u>
1972	33,107	33,107	19,260	58
1973	44,713	44,713	25,697	57
1974	47,933	47,933	26,473	55

Panel Area

1972	1,519	971	63
1973	2,119	1,420	67
1974	2,457	1,523	61

The majority of referrals to the Reporter in any one year for Scotland as a whole are for offence grounds. In 1972, for example, the 33,107 offence referrals constituted 92% of the total number of referrals. But whereas in that year, 58% of all referrals to the

Reporter actually reached a Hearing, in the panel area, the corresponding figure was 63%. The greater proportion of offence referrals sent by the Reporter in the panel area to Hearings was repeated for 1973 and 1974, as can be seen. As for other grounds of referral, the proportions of cases referred to a hearing for Scotland and for the panel area were similar at 74%.

However, as a proportion of all cases dealt with on offence grounds by the hearings, marginally more residential supervision orders were made for the panel area than for Scotland as a whole. Of all disposals made in the panel area in 1972, 16.7% involved a residential supervision requirement, whereas the national figure was 15%. In 1973 and 1974, the figures for the proportion of residential supervision requirements in the panel area decreased to 12.5% and 9% respectively. What was particularly interesting about this was that the decrease occurred at a time when the numbers of residential orders being made also decreased nationally, but when the proportion of residential orders on offence grounds actually increased. What these figures suggest is that some significance may well be attached to offence behaviour in deciding upon residential care.

The variation between the national figures and those for the panel area was indicative of the wide degree of variation in referral and disposal patterns between the different administrative areas of Scotland, as has already been noted. It is precisely because of such variation and because of the Kilbrandon argument that panels should be community based that, for the purposes of this research at least, to have ignored administrative and organisational boundaries would have been to distort any conclusions that may be drawn about decision-making.

An important factor placing further constraints on the research was that with local government reorganisation in 1975, the administrative boundaries for the Reporter's department and the composition of the panels were to change. It was decided therefore to conclude the empirical part of the study in Scotland before May, 1975.

(ii) England: the Juvenile Court

After initial discussions late in 1973, with the Clerk to the Justices in the court area, permission was given in principle for the research to go ahead. And though the Chairman of the Magistrates expressed some initial concern, after the proposal was discussed with her in more detail, final approval was granted for the research to begin in 1974. As it turned out, the Chairman proved to be very helpful in accommodating the project and in maintaining the co-operation of her colleagues.

As we have already observed, the arrangements for court hearings were very different from those for panel hearings. All cases coming before the juvenile magistrates were heard in the same court buildings and in the mornings of the same three days each week. The complex which housed the Magistrates' Courts also housed the police headquarters for the area. Thus even in terms of the physical location (primarily the proximity of police offices) and the arrangements for convening juvenile courts, there was a marked difference from the Children's Hearings. Though the juvenile court in the pilot study was held in a less formal atmosphere, relatively speaking, the court room in the study area was structured architecturally in the traditional manner, with obvious implications for social relationships.

On occasion, 'extra' juvenile courts were convened ex tempore when it appeared that the work of the day would not be completed by the main juvenile court. Since, as a consequence of the selection process, all juvenile magistrates must also be magistrates in the adult courts, where the adult magistrates' court had completed its business, those juvenile magistrates present could be called upon to preside over a juvenile court. What made this easier was the fact that, though three magistrates generally presided, on occasion only two did so.

Just as importantly in terms of the organisational differences between panel and court areas, whereas panel hearings dealt with very rarely more than six cases in any one session during the period of the research, as many as forty were arranged for court hearings. As a result, the court hearings tended to be somewhat shorter. (See below)

The area within the jurisdiction of the Magistrates' Court in the study included the town itself and also the outlying districts.

Whereas the statistics relating to the children dealt with by the Children's Hearings in the panel area were readily available, it proved exceedingly difficult to obtain comparable information in respect of the study area in England. The researcher contacted the Home Office, D.H.S.S. and even the Institute of Criminology at Cambridge, but with little success. As a final resort, contact was made with the police in the court area, who were able to provide figures which, however, were not collated in the same manner as the Crime Statistics for England and Wales. Even then it was only after permission had been obtained from County Headquarters that they were made available.

What is apparent from them is that, like the panel area, and perhaps not surprisingly, the majority of children appearing in juvenile court were there on accusations of having committed criminal offences. This holds true for both years prior to the research.

Table c. Court Area

	<u>Offences</u>	<u>Other Reasons</u>
1972	470	39
1973	578	36

Thus in both years, more than 90% of all charges were for offences. Similarly, the majority of children appearing in court were boys with 82% and 80% in 1972 and 1973 respectively. (The national figure for 1972 was rather higher, at 91%.)

Obviously one of the more significant differences between the Scottish and English systems lies in the measures available for dealing with children, since the English courts do have punitive measures available. It was for this reason, particularly with a view to providing a base line for comparability, that the Case Study method had been adopted in the attempt to examine the relative merits of types of information. The significance of such measures can be seen in terms of the decisions made in the court area.

	<u>1972</u>	<u>%</u>	<u>1973</u>	<u>%</u>
Fine	155	39.4	158	36.15
Care Order	44	11.2	62	14.2
Supervision Order	97	24.68	93	21.28
Attendance Centre	37	9.41	24	5.49
Committed to Crown Court	9	2.29	6	1.37
Absolute Discharge	7	1.78	8	1.83
Conditional Discharge	40	10.17	73	16.7
Detention	4	1.01	8	1.83
Binding over	-	-	5	1.44
Total	<u>393</u>		<u>437</u>	

In both years the fine was extensively used, though below the national figure of 50% in 1972 for all persons under 17. But what is obvious, even from a cursory examination of the figures, is that despite the emphasis in the official reports on supervision and care orders, and despite the introduction of care proceedings, more than 60% of all decisions were other than care or supervision orders.

(iii) The Samples

At the time of undertaking the research, there were 35 people registered as panel members in the Scottish study area and 33 people on the juvenile bench in the English one. Of the 35 panel members only two failed to participate in the research, one on the grounds that he was opposed to the research in principle; the other, it was later discovered, had in fact had no objection to the study but had not received the appropriate material relating to the case studies. In the court area, of the 33 magistrates who were juvenile magistrates, two also did not participate in the research. Of these, one was at the time in a position of some civil responsibility which did not allow him to discharge his judicial duties on a regular basis; the other refused to take part in the case-study stage of the research, although she expressed her willingness to participate in other stages.

The final figures were then 33 panel members and 31 juvenile magistrates. Because the samples are small as a consequence of the dictates of a research design which sought to examine certain aspects of collective decision-making and the organisational characteristics of complete areas, it is obviously unrealistic to relate the figures to national statistics. But as we have argued, it is the peculiarities of decision-making within complete areas with which we are concerned, not with the degree of representativeness between national and local profiles.

In the following section, we examine the comparability of the two samples prior to discussing the findings based on the first stage of the research employing the Case Study method.

Sex

Of the 33 panel members, 16 were male and 17 female; of the 31 magistrates, 17 were male. The difference between the two samples in terms of sex was not significant ($\chi^2 = .2583, p .7, 1 \text{ df}$)¹.

Age

Whereas the mean age for panel members included in the study was 44.5, for juvenile magistrates it was 52.9 years. Sixteen panel members, but only two magistrates, were under 40 years old; six panel members and seven magistrates were aged 40-50; and finally 11 panel members were older than 50, though as many as 22 of the juvenile magistrates were so. The difference in terms of age was highly significant ($t = 4.008 \text{ } p .001$) The very different ages of the magistrates and panel members may well be a reflection of the selection processes within the different administrative structures. Panel members are selected only after they have applied for membership. Anyone may apply, but is required to go through a selection process usually involving members of social work departments, children's panel advisory groups and serving panel members. Since the panel is supposedly representative of the community, it was expected that a high proportion of younger people would apply. Though there is again variation between regions, the national figures reveal that in 1976, almost 44% of all panel members were under 40, two-thirds of whom were in the 30-40 age group. (Moody 1976)

1. Though the sample sizes are small we have adopted the convention for this thesis that p levels equal to or less than .05 will be considered significant. The analysis of the data from the empirical study was conducted employing

The selection process for magistrates, however, is very different. Though the bench for a particular area is also meant to be representative (Magistrates' Association 1975), there is one important factor that bears on this. Only those magistrates who are adult magistrates are eligible for juvenile court membership. Thus, although personal qualities are also important, juvenile magistrates are chosen from the ranks of the bench as a whole and invited to sit on the juvenile bench. And since the only restriction on service in juvenile court is that the retiring age is 65, a high proportion of juvenile magistrates have long periods of service behind them.

Thus, whereas at the time of the study, the longest serving panel members had been on the panels for $3\frac{1}{2}$ years, individual magistrates had served for as long as 18 years in the juvenile court and 21 years in the adult court.

Youth experience

The rather vague guidelines that refer to the criteria for selection to panel membership and juvenile bench membership suggest that dealing with children would be a distinct advantage. Nevertheless, in terms of their experience in youth work (e.g. youth club work, voluntary work etc.) there were significant differences between panel members and juvenile magistrates. Whereas 24 of the 33 panel members had some experience in working with youth, only 12 of the magistrates did so. ($\chi^2 = 7.5162$, $p = .01$)

Marital status

Of the 33 panel members, 28 were married and of the magistrates 27. Two panel members and two magistrates were widowed, with the remaining in each group being single. There was then no significant difference in the marital status of the two groups of subjects. ($\chi^2 = .1558$, $p = .7$, 2df)

Full-time education

Both groups were asked for the date of completion of full-time education. As the table below shows, there was no significant difference between the panel members and juvenile magistrates.

mainly formulae with built-in corrections for the vagaries of small sample statistics. We therefore feel justified in adopting the usual convention of .05 as the level at which the results of this thesis can be considered significant.

	16 and under	17-19	20 and over	N
Scotland	11	11	11	33
England	16	9	6	31

$$\chi^2 = 2.5364, p = .3, 2 \text{ df})$$

Caring Profession

In both countries personal qualities and expertise at dealing with children were considered important criteria for either panel or bench membership. Yet when we examine the occupations of the two groups, we find a significant difference in terms of whether individuals were members of a caring profession or not. 'Caring profession' is a rather arbitrary category but we mean by it those occupations or professions where the individual is concerned with the health, welfare or education of children or of adults. In Moody's analysis of panel members in 1976 it was found, for example, that of all panel members in Scotland, 25% were teachers and almost 10% involved in medicine. (Moody 1976) Twenty two panel members but only nine of the magistrates were members of what we have called 'caring professions'. The difference was significant at the .05 level. ($\chi^2 = 4.392, 1 \text{ df}$)

Once again, because small samples are involved, a number of caveats have to be borne in mind in respect of interpretation and analysis. This is especially true in respect of the Case Studies. We wanted to have a baseline of comparison and therefore panel members and magistrates completed the case studies individually with the result that we had only just over thirty for each group. This was necessary, however, since we were also later to examine the extent to which the beliefs held by panel members and magistrates in general influenced the process of collective decision-making in the actual hearing situation. Whether the beliefs and assumptions held by individual subjects outwith the context of a court or a panel hearing did influence the actual decision-making process was something we wished to test empirically. And since we have already criticized Mannheim et al.(1957) and Hood (1972) for their lack of rigorous observation in their research on sentencing, the significance of the results derived from the Case Studies can only be appreciated in relating them to later stages of our own study. By adopting an approach based on 'methodological triangulation' (Denzin 1978) no

stage of the research should be assessed entirely independently from the others.

(iv) Case Studies: Panel and Court Scores

(a) Welfare Factors

Because of the comparative nature of this study, information will be presented firstly relating to the major hypotheses but will also be supplemented by information about panel members and magistrates, respectively. That is, as well as presenting information about differences between the two groups, it is also possible to discuss some of the findings relating to differences within groups. This chapter will only contain information as to the findings from the case studies and their relationship to the major hypotheses of the research. All 33 panel members and all 31 magistrates completed the case studies.

Hypothesis I that for the purpose of decision-making, panel members will treat welfare considerations as more important than will juvenile magistrates

Earlier in this thesis, we examined different theories of punishment and crime as providing 'available ideologies'. We also argued that the trend in juvenile justice had been increasingly towards a more welfare-oriented approach and not based on the conceptual framework of free-will and responsibility. Though criminology has never really reconciled the competing paradigms of determinism and free-will, what is more salient for our purposes is an examination of how these paradigms are incorporated into the frames of relevance of individuals responsible for making decisions about children. This is especially so given that the administrative frameworks in Scotland and England are themselves founded upon a different conceptual basis. That is, though the panel hearings are concerned exclusively with the needs and welfare of the child, court hearings are institutionally committed to questions of guilt or innocence (or in more contemporary language, 'whether he did it or not').

As can be seen from Table I, over all cases taken together to provide an aggregate welfare score for both groups of subjects, panel members scored significantly differently from juvenile magistrates. (The lower the score, the greater the emphasis.)

Table I. Case Study Scores: Welfare Factors

	All cases	Case A	Case B	Case C	Case D	Case E
Panel	43.36 (4.49)	9.67 (1.708)	7.91 (1.284)	8.64 (1.979)	8.09 (1.234)	9.03 (1.527)
Court	52.26 (6.676)	10.61 (1.599)	9.74 (2.063)	10.41 (1.879)	9.58 (2.501)	10.93 (1.74)
t-value*	5.49 p<.001	2.307 p<.05	4.05 p<.001	4.2 p<.001	4.32 p<.001	4.59 p<.001

(Figures in brackets are standard deviations)

(* In this and in all other calculations, the small-sample t test was employed.)

Panel members, with a mean score of 43.36, would appear to place more emphasis on welfare factors than do juvenile magistrates ($\bar{x} = 52.26$), the difference being significant at the .001 level. Thus, Hypothesis I would appear to receive strong support, at least in respect of the case studies. This is perhaps the least surprising of the differences between the two groups of subjects since the very nature of juvenile justice court philosophy and proceedings, a modified version of the ordinary courts of criminal law with summary jurisdiction, would suggest that welfare factors might be considered less important by magistrates because of their judicial role.

In terms of the training offered to both panel members and magistrates, both receive lectures and talks from members of the different professions servicing the Hearings and the Court systems respectively. Yet, we have also seen that juvenile magistrates must acquire some familiarity with the law and its application (see above, Chapter V). Moreover, the training offered to panel members, far from being related to specific problems of the law, more often than not is aimed at increasing the individual's diagnostic and assessment skills. (See Martin and Murray 1976.) Thus, panel members may well be trained, and even selected, on the basis of their ability to understand the factors in a child's background in order thereby to decide upon a more appropriate 'compulsory measure of care'. The concern of magistrates, in both the adult and the juvenile court,

with the issue of intent and the availability of measures (again in both jurisdictions) of a more overtly punitive nature suggest that they will be less inclined to view welfare considerations in isolation. We are not suggesting that juvenile magistrates do not take welfare factors into consideration but that, by virtue of their training and the ethos of the court system, they do so to a lesser extent than panel members. Indeed, as we shall later argue, panel members themselves do not, prima facie, ignore more judicial considerations and may even on occasion employ care measures as disguised forms of punishment. This is not to argue that welfare always provides no more than a rhetoric of treatment which legitimates in reality a more punitive form of juvenile justice (see May 1977); that needs more careful argument.

But for present purposes, the fact that juvenile magistrates appear to ascribe more importance to what we have referred to as 'judicial' factors is perhaps not surprising from members of a system where the legal protection offered to the rights of the individual is underpinned by a conceptual framework on which considerations of punishment can be justified. (See MacCormick 1974.) And the fact that panel members are in more of a position to take preventive action would imply that welfare factors would in practice as well as in theory be extremely important.

Even when different variables are controlled for, the differences in the scores generally remain highly significant. (See Table (g) in Appendix II) The general conclusion that can be drawn from this stage of the analysis then is that the different degree to which panel members or juvenile magistrates treat welfare factors as important may be attributed more to differences between the respective court or panel systems rather than to considerations such as age, etc. There are however two exceptions that ought to be noted at this juncture.

For those with experience in youth work, the difference between the average scores of panel members and magistrates was not significant, ($p = .1$). On the other hand, the difference in the scores between those who had no experience in youth work was significant at the .001 level (1 df). But whereas magistrates with

youth experience attached greater emphasis to welfare factors ($\bar{x} = 53.89$, $t = 3.0835$, $p.01$, 1 df), the converse tended to hold for the panel members where the mean score of 44.12 for those with youth experience was somewhat greater than those without ($\bar{x} = 41$, $t = 1.733$, n.s.)

Similarly, the scores attained by those who were members of a caring profession, as for those who were not, were significantly different. For those in the two groups who were members of a caring profession the difference was significant at the 0.05 level; for those who were not members of a caring profession, the significance of the difference was even greater at the .001 level. In neither country, however, was there a significant difference between those who were and those who were not members of the relevant professions.

From the fact that the overall welfare scores between the panel members and juvenile magistrates were significantly different ($p .001$), Hypothesis I(a) would appear to have been given strong confirmation, at least from the data collected by the case study method.

But though the differences between the two groups of subjects were significant, some indication was sought of the extent to which the members of the respective groups were in agreement as to the importance of welfare. For this purpose, a coefficient of variation¹ was computed to allow for comparison to be made of the degree of concordance reflected in the two sets of scores. Not only was the overall welfare score for panel members lower than that for magistrates (indicating greater emphasis), but there was also less variation in the panel members' scores than in the juvenile magistrates. Whereas the coefficient of variation for panel members' scores was 10.373, the corresponding figure for juvenile magistrates was 12.774. As we shall see later, the greater degree of variation in the magistrates' scores could be accounted for by their reluctance to ignore more judicially oriented factors such as intention and awareness of right and wrong. The separation of the adjudication of the allegation issue from final disposal in the Scottish system means

1. See Appendix I for a discussion of the Coefficient of Variation V.

that the panel member's role is not so circumscribed by such judicial concerns, and hence there may be more agreement that welfare factors are important. But as we shall also see, even though panel members view welfare factors as more relevant this does not preclude the possibility of their being influenced by other considerations.

Theories of Delinquency: Panel Members and Magistrates

Hypothesis 1(a): of the different theories of delinquency, more importance will be ascribed to welfare factors in the case based on the psychoanalytic perspective than in any other case

The overall score, that is, the score obtained over all cases, was broken down into a welfare score for each case study, and by implication for each of the different theoretical perspectives on which they were based.

As we saw in Table 1, for each of the respective case studies, and reflecting the difference in the overall welfare scores, panel members scored consistently lower than did juvenile magistrates. The significance of the difference was in all but one of the cases at the .001 level (62 df); in respect of Case A the difference, though still significant, was at the .05 level. But with particular reference to Hypothesis 1(a) the mean score of 7.91 attained by panel members for Case Study B (the psychoanalytic case) was in fact the lowest mean score, of all the case studies, for welfare factors. That is, of all the different perspectives depicted, more importance was ascribed to welfare factors in this case than in any of the others. Table 2 shows the respective panel and court scores for the individual cases in order of importance attached to welfare factors within the individual cases.

Table 2

<u>Panel</u>	<u>Court</u>
Case B $\bar{x} = 7.91$	Case D $\bar{x} = 9.58$
Case D $\bar{x} = 8.09$	Case B $\bar{x} = 9.74$
Case C $\bar{x} = 8.64$	Case C $\bar{x} = 10.41$
Case E $\bar{x} = 9.03$	Case A $\bar{x} = 10.61$
Case A $\bar{x} = 9.67$	Case E $\bar{x} = 10.93$

However, as can be seen from Table 2, the mean score of 7.91 for the psychoanalytic case study was itself not significantly different from

the mean of 8.09 attained in respect of Case D, based on behaviourist theories. The importance of this is that juvenile magistrates did in fact ascribe more importance to the welfare statements in Case D, with a mean score of 9.58 than in any of the other case studies but that this showed no significant difference from the mean of 9.74 in respect of psychoanalytic factors.

Hypothesis 1(a) can then be said only to have partial confirmation in that whereas the difference in the scores between the two groups of subjects is significant, only for panel members is Case B, based on the psychoanalytic perspective, the one in which welfare factors are most important.

At this juncture, we can speculate about the significance of such findings in relation to the perceptions maintained by panel members and magistrates as to the importance of particular kinds of information. Later, however, we discuss a major caveat which presents the possibility that any interpretation of these findings has to be located within a critique of the case-study method itself. But for present purposes, even in relation to panel members' scores, the behaviourist case study received a welfare score which was not significantly different from that for psychoanalytic factors though it was certainly greater. What is of extreme interest is the fact that the two case studies whose statements receive the lowest welfare scores (and therefore the greater emphasis) from both panel members and juvenile magistrates are both based on theoretical frameworks in which delinquency aetiology and, by implication, its treatment can be said to relate to individuals. The lack of any substantial difference between the perspectives within each group may well be accounted for by the fact that both emphasise the importance of the home and parental relationships in the development and growth of the normal child. Delinquency, in terms of both psychoanalysis and behaviourism can in part be attributed to a breakdown in the normal processes of socialisation. Conversely, in terms of these perspectives, the object of treatment or welfare measures can be fairly readily identified, focusing either on the parents, children or both. Indeed, policy changes in the care of children were premised in the sixties upon the importance of the family in delinquency aetiology.

Some weight is given to this speculation by the observation that a feature arising from this stage of the research is that for

panel members the case depicting sociological determinism (i.e. Case A) is the one in which the welfare score is higher (indicating less emphasis) than in any other case.

There could be a number of reasons which explain the apparent lack of importance attached to welfare factors in the case based on sociological determinism, not least the fact that panel members and magistrates, even if they wished, are not in a position to effect any radical change in the environment of the child. That is, within the institutional setting of the hearing and court system, the information presented by the different experts within the social control network is primarily related to the child and his immediate environment. However, outwith the institutional context, this does not preclude the possibility that action can be taken. It is perhaps no coincidence that during the time of the research, a number of panels in different regions of Scotland were forming pressure groups in an attempt to have better provisions for the hearing system itself, but also to voice concern about the more social and political consequences of dealing with children from so-called deprived areas. (This was discussed by a number of panel members in interviews.)

But what must also be remembered is that the ideological basis of social work and probation work, both important influences within the respective systems is located within a conceptual framework of a determinism in which delinquency can be explained in terms of individual pathology. This is reflected in the importance of the role of social work in providing the respective systems with information about children and in the involvement of the profession in training and selection (particularly in Scotland).

However, there is a caveat that has to be borne in mind in making such an interpretation. Earlier (p.182) we suggested that the case studies were varied in respect of type of offence and the serious or harmful nature of the offence. What we have to recognise is the possibility that welfare scores may not simply reflect the importance ascribed to particular welfare factors or sets of factors by panel members but that they may reflect the relative unimportance (as perceived by the subjects) of other factors. We mean here specifically those associated with the other two variables that were varied, type of

offence and seriousness of the offence. Low welfare scores (indicating more emphasis) may then simply be the product of a perception by the subjects of the relative unimportance of more judicially-oriented considerations and not be indicative of any particular attachment to welfare considerations. The possibility exists that the respective scores are products of the methods employed in the research rather than a measure of the importance attached to particular factors.

For example, whereas Case E and Case A were the cases in which the welfare factors were given a high score (indicating low importance) they were also the cases in which a low score (indicating high importance) was recorded by panel members in respect of the Harmful or Serious nature of the offence. And in respect of Case A on its own, it is also the case in which Awareness and Intentionality, constituent elements of Child Involvement, are perceived of as very important. Precisely the same relationship was recorded in the magistrates' scores. Any interpretation of the welfare, as of other, scores has therefore to be qualified in the light of the possible influence of the other variables manipulated in the case studies.

(a) Judicial Considerations

As a direct result of the means adopted for computing the case study scores, we have already noted that a 'judicial' score is a function of the welfare score. Thus where a mean score of

45.5 is attained for welfare factors the mean judicial score must logically be 54.5. Consequently, the fact that there has been strong confirmation of Hypothesis I regarding the extent to which welfare factors are more important for panel members than magistrates mathematically entails that judicial factors are more important for magistrates than for panel members. However, the design of the case studies made it possible to examine the extent to which the respective groups of subjects treat particular judicial factors as important. Whereas it is fairly obvious from the substantiation of Hypothesis I that juvenile magistrates will perceive judicial factors as more important than welfare factors, it was by no means certain that the differences indicated between panel members and magistrates would be maintained in respect of the different elements that made up the judicial dimension, as we shall now see.

Hypothesis II(a): for the purpose of decision-making, juvenile magistrates will place greater importance on the need to protect society

Table 3

	All	Case A	Case B	Case C	Case D	Case E
Panel	11.3 (2.158)	2.24 (.7796)	2.33 (.681)	2.39 (.648)	2.48 (.656)	1.85 (.7015)
Court	9.06 (2.42)	1.87 (.6595)	1.77 (.606)	2. (.718)	1.99 (.734)	1.52 (.5605)
t	3.851 p.001	3.407 p.01	2.02 p.05	2.27 p.05	3.26 p.01	2.05 p.05

(Figures in brackets are standard deviations)

Again, the mean overall score for social protection of 11.3 for panel members was significantly different (p.001) from the juvenile magistrate score of 9.06. Because of the direction of the scores, one may therefore conclude that panel members attach significantly less importance to the notion of protecting society than do juvenile magistrates, most of whom stated this to be a prime consideration in the fulfilment of their judicial role.

What was particularly interesting as revealed by the coefficient of variation, was that there was a greater degree of concordance between panel members ($V = 19.09$) as to the relative unimportance

of social protection. Though magistrates overall attached significantly more importance to social protection, they were much less in agreement as to its importance. ($V = 26.72$)

In every individual case, panel members and juvenile magistrates differed in the extent to which importance was attached to judicial factors. This difference was reflected in such a way as to reflect the greater importance in respect of each case attached to this factor by juvenile magistrates than by panel members. In view of the small sample sizes, it is perhaps worth pointing out that in three of the cases (B, C and E) the difference was significant only at the .05 level.

Whereas the differences between the actual scores are significant, both groups of subjects treated social protection in Case E as being more important than in any other case. This was also the case in which welfare factors were considered as relatively unimportant. The offence depicted in Case E, unlike the other cases, was one involving assault on the person, and it would appear that for both groups of subjects this constitutes behaviour against which it is relatively important that society be given protection.

However, as can be seen in Table 4 below, the scores in respect of the Harm or Seriousness of the offence were not significantly different for Case E, though magistrates were apparently more concerned at this than the panel members. In relation to Harm and Social Protection in Case E, panel members treated these factors both as less important in their deliberations than did the magistrates. It would seem reasonable to suggest that the relationship between Social Protection and Harm or Seriousness is understandable since it could be argued that the greater the Harm, the greater the need for social protection. The fact that in Case E panel members ascribed more importance to these two factors than in the other cases is particularly interesting since, in terms of the formal philosophy of the 1968 Act, they are less committed to questions of Harm and Social Protection. Nevertheless, in terms of a utilitarian philosophy there is no logical distinction between meeting the needs of children who offend and at the same time offering society protection. One panel member suggested that he -

"would be concerned about the seriousness and dangerousness of offences like taking and driving away a car or else assault with a booted foot."

There would appear to be prima facie support at this early stage of the analysis, for claims made by researchers such as Morris and McIsaac (1978) who suggest that decisions made by panel members may well be made in accordance with some type of modified tariff principle. That is, decisions are made on the basis of the nature of the offence, the seriousness of the offence, the need for adequate social protection and other such considerations. On such an argument there would then appear to be little difference between the position of the panel member quoted above and the magistrate who states, in an explicitly punitive vein, that one must

"measure your punishment by the nature of the offence, the harm that results and how this affects others. Our main purpose is protection".

However, though both magistrates and panel members appear to agree as to the importance of Social Protection and Harm, these factors may well be important for different reasons. Whereas it did seem that both groups shared similar views about Social Protection and Harm, particularly in Case E, further analysis suggested that this might simply not be the case. When the individual Social Protection and Harm scores for Case E were correlated, we find an interesting difference between the two groups of subjects. Social Protection and Harm were significantly but ~~inversely~~ ^{inversely} correlated in respect of the Panel members' scores ($r = .360$, $p = .05$). For magistrates, the correlation was positive but did not even approach significance ($r = .022$). It would be too naive to suggest that the nature of the offence and its consequences were not associated, at least in the minds of panel members, with the need to protect society. Panel members in general will argue that in general the Hearings system does in effect offer some protection to society though not in as explicit a manner as the juvenile court. But in particular cases, their decision is usually not influenced by the nature of the offence and its consequences except in so far as it is indicative of the need for case. Thus

" sometimes the nature of the offence can display the extent of disturbance in a child or the child's background. But I certainly don't think that the decision should be weighted by the seriousness." (panel member)

The decision then ought not to be linked to the offence in terms of the Harm that results nor in terms of the need to protect society. What this does not do, however, is to explain the strength of the negative correlation between Social Protection and Harm as indicated by the panel members' scores. What this perhaps raises in rather more general terms is the question of the reliability and validity of the case studies as instruments. We have argued that we adopted a number of strategies in the research in order to widen the scope of the data on which to draw in making conclusions. What we hoped to achieve at this stage of the research was a baseline of comparison between the two groups of subjects as a source of pointers that could be pursued in further stages of the research and the analysis. We merely reiterate at this juncture our belief in the necessity of supplementing the case study method, which we accept as an abstraction of the actual decision-making process, by other strategies more intimately involved in court and panel hearings.

With specific reference to Social Protection it does seem to be the case that it is indeed considered as more important for juvenile magistrates than panel members. In that respect, II(b) could be said to be confirmed. However, its relationship with other considerations will need to be examined more fully in later stages of the research as we develop our analysis of the influence of frames of relevance in the assessment of information for the purpose of decision-making. As we shall see, the magistrates and panel members are not so dissimilar in their treatment of other 'judicial factors'.

Harm/Seriousness

Hypothesis II(b): for the purpose of decision-making, magistrates will attach more importance to the Harm or Seriousness of the offence than will panel members

Table 4

	All	Case A	Case B	Case C	Case D	Case E
Panel	11.48 (1.679)	2.21 (.651)	2.3 (.6269)	2.57 (.494)	2.82 (.385)	1.57 (.49)
Court	10.33 (1.853)	1.81 (.5913)	1.93 (.6188)	2.19 (.5339)	2.61 (.487)	1.48 (.6658)
t	2.532 p.02	2.32 .05	3.37 .001	2.93 .01	1.13 .3	.623 .7

(Figures in brackets are standard deviations)

The difference in the means for the overall score was significant at the .02 level. However, not only are the scores of the two groups similar in their rank order, but an important feature of the scoring in relation to this factor is that there are cases in which the differences between the panel members and the juvenile magistrates are not significant. In particular, as can be seen in Table 4 above, the difference between the scores for Case D and Case E is not significant and in relation to Case A the difference is only significant at the .05 level.

The statements in Case E referring to the consequences of the offence, depicting the assault on the person and resulting in injuries are obviously treated as important by both groups of subjects. Whereas this is not an unexpected finding in relation to the juvenile magistrates, it is particularly interesting with regard to the panel members. The difference between the score given to 'welfare' factors in this case between the two groups of subjects was highly significant; the difference in the social protection scores was also significant ($p.05$); and, as we shall see later, there was a highly significant difference between the groups on the dimension of personal responsibility. The other case in which there is no significant difference in the Harm score is Case D where panel members returned a mean score of 2.82 as compared with a mean magistrate score of 2.61. But these scores for both groups of subjects reflected the fact ^{that} Harm was less important in this case than in the others. Thus the cases in which magistrates and panel members do not significantly differ are those with the highest and lowest Harm scores. Case D was in fact the case involving an unsuccessful attempt at shoplifting.

In Case E though in terms of Social Protection and Welfare, panel members and magistrates differed significantly as to the importance of these factors, this was not so with respect to Harm. The question that we have already raised is whether in fact this factor is important to both groups for the same reasons. Is, for example, assault on the person more important because of the Harm that results and the Seriousness of such an offence, or because such an offence is indicative of more serious levels of disturbance and so a greater need for intervention in terms of the needs of the child. We have already seen that for panel members the relationship between Social Protection and Harm or Seriousness is not positively

correlated and that for magistrates, though positive the correlation was not significant. One means of explaining what seems a surprising finding may well relate to the design of the instruments rather than to the way in which individuals conceive of such factors. Whereas 'Harmful' offences may also be 'Serious', it is not necessarily the case that those which are 'Serious' are always Harmful. The seriousness of an offence may well involve considerations of the actual involvement of the child, in particular the extent of deliberation, premeditation or planning displayed in the execution of the offence. One magistrate suggests

" you have to take everything into consideration e.g. if it's a very bad offence, or damage or cruelty you have to do this with every case. You have to take in everything they have done. If they planned to do it - watch it carefully then it's more serious, more despicable."

and

"But some cases where a boy breaks a street light are trivial - it's not deliberate. Serious offences, for me, are deliberate or mischievous offences."

Although Hypothesis II(b) receives confirmation from these findings, a qualification has to be added to the effect that in two instances, the difference in the Harm score was not significant. In that sense, the confirmation can only be said to be partial. Further, the relationship between this and other factors is as yet not clear. Given that we have suggested that the actual nature of the child's involvement in the offence, we shall return to this when we discuss Personal Responsibility.

Personal Responsibility

Hypothesis II(c): for the purpose of decision-making, juvenile magistrates will treat the notion of personal responsibility as more important than will magistrates

Given the different conceptual frameworks underlying the administrative structure of the panel and court systems of juvenile justice, it was hypothesised that juvenile magistrates would treat questions of personal responsibility as more important than would the panel members. In a system of justice based on a treatment-non-

punishment approach questions of responsibility would theoretically not arise. The position adopted, for example, by Wootton (see Chapters II and III) is that the concept of responsibility could and should be eliminated from a system of criminal justice, since intervention ought to be justified in terms of the causes of criminal behaviour. The concept of responsibility was in her view a theological and metaphysical abstraction. Children's Hearings, unlike the Juvenile Courts, are no courts of law. The functions of adjudication and of making decisions as to how to deal with children were separated in Scotland by Kilbrandon, and panel members, at least in terms of the formal philosophy, only decide upon the need for care. Thus, ~~as the main concern~~ the welfare of the child and his best interests and not with punishment, we argued that the issue of responsibility for an offence would be less important for the panel member than for the magistrate working within a system in which children can be punished and in which the issue of responsibility for an offence is important. This is, however, not to argue that panel members will, in terms of their own working frames of relevance, ignore considerations of responsibility.

We argued above, in discussing 'responsibility in general and the notion of mens rea in particular that important considerations for the ascription of responsibility were whether the individual had intentionally committed the offence, whether he knew what he was doing and that it was wrong and whether he was aware of the consequences of his actions. Such considerations are significant in ordinary moral discourse in deciding on moral responsibility and in allocating or exempting someone from blame or punishment. For the purpose of this thesis, one of the main objectives was to examine the extent to which panel members and magistrates agreed as to the importance of the concept of responsibility and the implications of this for the assessment and interpretation of information in the practical accomplishment of juvenile justice.

In terms of the formal philosophy underlying a social policy ultimately concerned with the welfare of children, deterministic assumptions are paramount. But in terms of the working ideologies or frames of relevance of individuals working within the spirit of that philosophy and responsible for its implementation there may well be what we have referred to as shifts in the frame of relevance

(Asquith 1977) with important implications for the translation of social policy into practice. The findings in relation to 'personal responsibility' itself will be presented first and then some consideration will be given to each of the constituent elements.

Panel members and juvenile magistrates again differed in their scores for Personal Responsibility overall and in respect of each case study. The difference in the overall score was significant at the .001 level; and the difference in the scores for each respective case study was also significant, albeit that the level of significance attained in Cases A and D was at the .05 level only, with 62 df. Hypothesis II(c) has therefore been given strong confirmation, though as we shall see the overall difference in the scores for personal responsibility between panel members and magistrates conceals some interesting similarities when the constituent elements of personal responsibility are themselves subjected to analysis.

But in relation to the 'umbrella' concept of 'personal responsibility', as can be seen in Table 5, the lowest panel score for personal responsibility (indicating greater emphasis) was in respect of Case A ($\bar{x} = 5.88$) which had also been the case considered least important in terms of welfare factors ($\bar{x} = 9.67$).

Table 5 Personal Responsibility

	All	Case A	Case B	Case C	Case D	Case E
Panel	33.85 (3.7587)	5.88 (1.199)	7.48 (.9706)	6.36 (1.149)	6.61 (1.179)	7.55 (1.281)
Court	29.65 (5.1779)	5.71 (1.182)	6.55 (1.775)	5.44 (1.227)	5.9 (1.51)	6.06 (1.394)
t =	3.71	.5648	2.779	2.95	2.05	4.36
p =	.001	n.s.	n.s.	.01	.05	.001

One thing that should perhaps be pointed out is that whereas, as we have seen, 'judicial' (which includes Personal Responsibility, Harm and Social Protection) scores are certainly a function of welfare scores, the personal responsibility score is not. Thus, the fact that Case A received a large welfare score and a low personal responsibility score is not accounted for by simply suggesting that one is a mathematical function of the other.

The position with regard to the magistrates' scores, (there was in fact no significant difference in the scores) though not exactly the same, is somewhat similar in as much as Case A was considered to be less important in terms of welfare factors ($\bar{x} = 10.61$) but more important in personal responsibility ($\bar{x} = 5.71$). In all cases, the personal responsibility scores are lower for the magistrates, indicating that, for the purpose of decision-making, they attach greater importance to this concept than do panel members.

In terms of sociological theory one of the basic problems has been the attempt to reconcile the competing claims of voluntarism and determinism, the sociological analogue of the free-will/determinism debate in philosophy. In ordinary language and moral discourse it may well be more difficult to construct an argument based on environmental (symbolic and physical) considerations than on those relating to individual psychological make-up in the attempt to excuse someone from responsibility. Thus, as we have suggested earlier, panel members and magistrates may be less inclined to take what we have called sociological factors into account because they are relatively powerless at effecting any change in the environmental and background characteristics of the child. It is, however, more conceptually difficult to exempt an individual from responsibility in this way.

What is perhaps most surprising is the fact that personal responsibility in relation to Case E is treated as relatively less important by both magistrates and panel members ($\bar{x} = 6.06$ and 7.55 respectively) than for other cases. As can be seen in Table 5 above, in Case E, in which the offence was that of assault on the person, personal responsibility was less important for the panel members than in any other case; and for magistrates only one other case, Case B, received a greater personal responsibility score. What is surprising is the fact that juvenile magistrates and panel members in this case attached importance to the need to protect society and to consider the harm resultant from or associated with an offence, whilst not attaching great importance to the degree of responsibility of the offender. When we correlated the individual scores for Social Protection, Harm and Personal Responsibility in

Case E there is, however, perhaps an important difference between panel members and magistrates. Earlier we suggested that our elision of Harm and Seriousness may not reflect the fact that seriousness may be as much determined by the nature of the child's involvement in the offence as by the actual harm ensuing from it. In Case E, for magistrates, the correlation between Harm and Personal Responsibility ($r = .245$, 29 df) was positive though it only approached significance. For panel members the corresponding r was .065, and was no where near significance. It is, of course, dangerous to make inferences upon figures that are not significant but it presents the possibility that there is in fact a closer relationship between Personal Responsibility and the nature of the offence, at least as perceived by magistrates than by panel members. We shall return to this in the course of our analysis. Though the case study method has a number of limitations, the significance of such findings will only be realised in reference to the analysis of decisions about actual cases where we shall examine the extent to which different frames of relevance may influence the use of information and the decision as to how to deal with the child.

Though the personal responsibility data continue the trend of significantly different scores between panel members and magistrates, they nevertheless conceal some interesting features which emerge when we examine the constituent elements individually. These are Awareness of the consequences (abbreviated to 'Consequences'); awareness of the difference between right and wrong (abbreviated to 'Awareness'); and lastly, the notion of Intentionality.

Awareness

As can be seen in Table 6, the significance of the difference of the overall Awareness scores of panel members and magistrates was at the .001 level and showed that panel members attached less importance to this factor than did the magistrates.

Table 6 /-

Table 6

	All	Case A	Case B	Case C	Case D	Case E
Panel	11.64 (2.333)	1.97 (.834)	2.3 (.6735)	2.52 (.7015)	2.3 (.7171)	2.54 (.7422)
Court	9.48 (2.6745)	1.64 (.784)	1.87 (.7509)	2. (.762)	1.97 (.8224)	2. (.5587)
t	3.38 .001	1.36 .2	2.39 .02	2.79 .01	1.67 .1	3.03 .002

(Figures in brackets are standard deviations)

However, as can be seen, in respect of individual case studies, there were particular instances when the difference in the scores was not significant. There was no significant difference in the Awareness scores ascribed by panel members and magistrates to Case A (that based on the environmental perspective). Moreover, both panel members and magistrates, as reflected in the respective mean Awareness scores of 1.97 and 1.64 were agreed that the notion of the child's awareness of the rightness and wrongness of his behaviour was more important than for any other case. Though for Case D where the mean panel member score was 2.3, and the corresponding magistrate score was 1.97, the difference again failed to reach significance, for cases B, C and E the trend of significant differences was maintained.

Consequences (Awareness of the Consequences)

Table 7

	All	Case A	Case B	Case C	Case D	Case E
Panel	12.51 (1.3285)	2.57 (.6045)	2.73 (.4453)	2.24 (.7796)	2.12 (.769)	2.85 (.3585)
Court	11.84 (1.7057)	2.71 (.4539)	2.48 (.6154)	2.06 (.7155)	2.03 (.8224)	2.55 (.5587)
t	1.75 .1	.98 n.s.	1.78 .1 n.s.	.93 n.s.	.44 n.s.	1.5 n.s.

(Figures in brackets are standard deviations)

More interesting, however, was that the overall score in respect of 'consequences' showed no significant difference between the mean panel score of 12.51 and that of 11.84 for magistrates. And though the Awareness scores reflected the trend of juvenile magistrates attaching more importance to so-called 'judicial' factors, there were no significant differences in the individual cases. What is equally interesting is that for Cases B and C, there are only small differences in the degree of variation in the respective scores. In Case C, for example, the coefficient of variation for the panel members' scores was 34.803 and for the magistrates 34.733; and for Case B, the corresponding figures were 23.908 and 24.814 respectively. (The overall coefficient of variation of this factor was 10.616 and 14.40 for panel members and magistrates respectively.) Thus, not only was there no significant difference in the scoring on the 'consequences' factor for these two cases but the two sets of scores showed similar levels of internal concordance.

Moreover, the coefficient of variation for Case B (16.31) for panel members is one of the lowest variation coefficients for the case studies, though for Case E there is even less disagreement as to the importance of this for panel members ($V = 12.57$). Thus, not only are the scores between the two groups of subjects similar but they also indicate a considerable degree of concordance, especially noteworthy in respect of the panel members.

Intentionality

Table 8

	All	Case A	Case B	Case C	Case D	Case E
Panel	9.7 (2.0814)	1.38 (.5318)	2.41 (.6527)	1.61 (.6485)	2.18 (.7158)	2.15 (.87)
Court	8.29 (2.082)	1.32 (.532)	2.19 (.8583)	1.32 (.5895)	1.9 (.7341)	1.54 (.7111)
t	2.64 .01	.08 n.s.	1.19 n.s.	1.79 .1	1.51 .1	3.03 .002

(Figures in brackets are standard deviations)

Though the overall intentionality scores were significantly different ($\bar{x} = 9.7$ and 8.29 for panel members and magistrates respectively) this is almost entirely accounted for by the very significant difference between the scores for this factor in relation to Case E. In no other case is there any significant difference between the two. There is then generally little disagreement between panel members and magistrates as to the importance of intentionality for the purpose of decision-making. Thus, in the cases involving theft of a car (Case A), breaking into and damaging a school (Case B), breaking into a factory (Case C) and stealing from a departmental store^(Case D), the issue of Intentionality was as important for panel members as it was for the magistrates. For all these cases, Awareness of the Consequences was also apparently as important for the magistrates as for the panel members. Only in Case E was there a significant difference with magistrates ascribing much more importance to this factor. The only preliminary interpretation that we can make of this is that, as we have seen, the degree of involvement in the actual planning or execution of such an offence would be important for those whose frame of relevance was founded mainly upon a judicial framework. What this must alert us to in our analysis is the possibility that apparent consensus between the groups of subjects actually conceals significant and fundamental reasons as to why certain factors are important. For example, though there is a degree of agreement between panel members and magistrates as to the importance of Intentionality, it is impossible to gauge in what way Intentionality is deemed important without locating it in the broader framework of the frames of relevance dominating decision-making by the two groups.

(v) Case Studies: 'Within' Scores - Panel Area

Even when the influence of different variables was taken into account, there was generally little difference between the case study scores.¹ Only in a few instances were there significant differences. Those who had had experience in youth work returned a mean score of 11.76 for Harm as compared to a mean of 12.5 for those panel members who had had no such experience ($t = 2.058$, $p .05$ and 31 df). What this suggests, rather surprisingly, is that those who

1. See Appendix II.

had some experience in youth work in fact gave greater consideration to Harm than did the rest of their colleagues. (As we shall see later, also surprising is the fact that in reference to the actual cases, those panel members with youth experience treated welfare factors as being less important than did the other panel members.) Moreover, though the differences were not significant, those with experience in youth work also attached more importance to each of the constituent 'judicial' elements.

Again, though the differences are not significant, there is an interesting trend in the scores for Harm and Social Protection when we consider the length of experience of the panel members. Thus, for both Harm and Social Protection, the pattern for the three groups (those with 6 months, $2\frac{1}{2}$ years and $3\frac{1}{2}$ years' experience) was of increasing importance attached to these factors. That is, those who had the longest experience as panel members ($n = 19$) returned mean Harm and Social Protection scores (11.266 and 11.105 respectively) which were lower than the corresponding means for the other two groups with less experience. And though the longest serving panel members attached less importance to Awareness factors ($\bar{x} = 12.263$) than did the other two groups ($\bar{x} = 10.55$ and 11.2 for those with six months and $2\frac{1}{2}$ years' experience) they did nevertheless pay greater attention to the Intentionality factors ($\bar{x} = 8.89$). We shall return to this in a moment when we have examined the relationships amongst the different factors included in the case studies.

Table 9 Panel Case Study Scores: Correlations*

	Welfare	Social Prot.	Harm	Awareness	Consequences	Intentionality	Pers. Resp.
Welfare	-	<u>-.405</u>	<u>-.509</u>	<u>-.623</u>	-.254	<u>-.483</u>	<u>-.744</u>
Social Prot.		-	.2772	-.0088	<u>-.3881</u>	-.1231	1.203
Harm			-	-.0956	.0104	.1219	.012
Awareness				-	<u>.3146</u>	.0958	
Consequences					-	-.0531	

* Significant correlations are underlined.

There is no significant relationship between Intentionality and the other constituent elements of personal responsibility, Awareness (of the difference between right and wrong) and (Awareness of the) Consequences, which are themselves correlated significantly at the .05 level. We have already seen, immediately above, that longer-serving panel members treated Intentionality as more important than other factors and that the overall difference between panel members and magistrates in terms of the same factor was accounted for solely by one case. It would be unwise to conjecture as to the reason for the difference in importance attached to one constituent element of personal responsibility and not to the other two. Nevertheless, in discussion with panel members, what became obvious was that Awareness of the difference between right and wrong and Awareness of the consequences of behaviour were considered important indications of the child's character. That is, they were more important in terms of the way in which the child had been brought up and of the principles by which his behaviour was governed, rather than being specifically associated with the child's involvement in the offence. The notion of Intentionality, however, more readily locates attention on the child's actual involvement in the offence itself. This may account for the lack of relationship between Intentionality on the one hand and Awareness of consequences on the other. (The same factors in the court sample were all positively correlated.)

The greater importance attached to Intentionality may also be accounted for by the fact that panel members with longer experience did express concern that 'you become hard after a while'. The frustration expressed by the more experienced panel members at the lack of facilities, the continuing reappearance of a number of children, and the apparent increase in 'crime' might explain the importance with which they treat the actual involvement of the child in the offence. It was in expressing such concern that a number of panel members also thought that the restrictions placed on the length of membership of a panel was no bad thing. Certainly the panel members with the longest experience treated Harm, Social Protection and Intentionality all as more important than did those with less experience.

As was expected, the welfare score was negatively correlated with all the other factors and in all but one instance (Consequences) the correlations were significant. The only other significant correlation was between Social Protection and Consequences ($r = - .3881$, $p.05$), but there was no significant correlation between Harm and Social Protection though it did approach significance.

(vi) Case Studies 'Within Scores': Court Area

The 'within' scores for magistrates in respect of all the case study factors show no real significant difference overall. The only significant differences which emerged when controls were imposed arose in relation to experience in youth work and length of court experience as a magistrate in both the juvenile and the adult court.

The mean Welfare score for those with youth experience was 47.08, considerably lower than the mean of 53.89 of those without such experience ($t = 3.083$, $p.01$, 29 df), indicating that those with experience treated welfare factors as more important. (The reverse held in the case of panel members.) Similarly, those with experience in youth work had a mean Awareness score of 10.83, whereas those without had a mean score of 8.63 for the same factor ($t = 2.357$, $p.05$, 29 df). Though not statistically significant, other scores on Social Protection, Harm, Consequences, Intentionality and Personal Responsibility, all tended to be greater for those with experience in youth work than for those without such experience. That is, those without such experience did in fact attach greater importance to these other factors as well.

The difficulty of establishing comparable categories of the 'experience' of both groups of subjects in terms of their involvement in the two systems has already been noted. All of those who were magistrates in the juvenile court were, of necessity, also magistrates in the adult court, and their experience was thus two-fold. For the purpose of analysis, the length of experience in juvenile court and in adult court were treated separately, though this strategy still does not allow for meaningful comparison between the two groups of subjects with regard to 'experience'.

When juvenile court experience was held constant, there were no significant differences in the scores, though there were some particularly interesting trends. In particular, and though the figures involved are again small, the scores for the Intentionality factor are actually smaller with increasing juvenile court experience. The means were 10.25 for those with less than one year's experience as a juvenile magistrate; 8.062 for those who had been a juvenile magistrate for between 1 and 5 years; and 7.909 for those with more than five years of such experience. The inference that could be drawn at this stage of the analysis is that with increasing experience in the juvenile court, magistrates more readily ascribe importance to Intentionality as a factor to be considered for the purpose of decision-making. We must stress that the actual differences in the scores were not significant but that the trends displayed paralleled the corresponding scores for panel members.

This was repeated when we also took experience in the adult court into consideration where the corresponding means were 8.66, 8.25 and 7.833. Thus, it would appear that with increasing length of experience in both the juvenile and the adult court, the notion of Intentionality came to be treated as more important. The longest-serving panel members, who had obviously not had the length (nor the kind) of experience enjoyed by magistrates, also treated Intentionality as more important than their colleagues with less experience.

However, where this was also true of Social Protection and Harm for panel members, it was not so for magistrates, who revealed no consistent pattern in the importance they attached to these two factors. But for Personal Responsibility as a whole, though there is again a lack of significant differences, the scores were smaller the more experience a magistrate had. That is, personal responsibility would appear to tend to become more important as a factor in the judgment of juvenile magistrates as they gain more experience in court. At this juncture it is impossible to suggest that as magistrates gain experience they attach more importance to the notion of Personal Responsibility and therefore are more punitive. That does not logically follow and nor were the Case studies designed to examine that. But it is perhaps worth bearing in mind

that Lemon (1974) established that the first year of training did appear to inculcate punitive attitudes and instilled a necessary 'judicial attitude'. The training of magistrates does demand more familiarity with complex legal issues than for panel members, and the magistrate though working in a juvenile court is also a magistrate in the adult court where considerations of liability and fault are more explicitly significant. But institutionally whereas panel members are not required to decide such matters, magistrates even in the juvenile court have to determine 'whether he did it' and then 'what to do about it'. It is when we examine the correlations between the magistrates' scores that more consistency is revealed.

Table 10 Case Study Scores: Court Area Correlations*

	Welfare	Social Prot.	Harm	Awareness	Consequences	Intentionality	Pers. Resp.
Welfare	-	-.454	-.617	-.804	-.620	-.657	-.866
Social Prot.		-	.2983	.1267	-.0371	-.0493	-.038
Harm			-	.2416	.1469	.3715	.299
Awareness				-	.6181	.4729	
Consequences					-	.3220	

* Significant correlations are underlined.

All three constituent elements of Personal Responsibility (Awareness, Consequences and Intentionality) were correlated significantly. In particular, the correlations (both positive) between the Awareness and Consequences factors ($r = .6181$), and the Awareness and Intentionality factors ($r = .4729$) were both highly significant ($p = .001$ and $.01$ respectively). Moreover, not unlike the Scottish figures, the Welfare score attained by the juvenile magistrates was negatively correlated with all other factors considered, and in all cases significantly so. Though the caveats associated with small-scale statistics have to be voiced once more, the strength of the correlations for these factors could not by any means be ignored.

Of particular relevance is the close inter-correlation of Awareness, Consequences and Intentionality. Whereas panel members

had treated Intentionality differently from the other two factors, magistrates would appear to be more concerned with all three factors, and their importance for the purpose of decision-making. What remains unanswered at this stage of the analysis is whether the two factors of Awareness and Consequences are more obviously perceived by the magistrates as indicating the level and nature of the involvement of the children in offence behaviour; or whether, as appears to be the case for panel members, they are taken as indicative of the moral development of the child. That is, they tell more about the child generally than about the nature and degree of involvement in the offence. It could be argued that as magistrates operate within a framework of juvenile justice derived from criminal law in its application to adults (they do also, in fact, operate in adult courts) they will be more concerned with establishing the nature of a child's involvement in an offence. Such concerns are more obviously important in a system where amongst the measures available for dealing with children there are more overtly punitive options. The overall concern with personal responsibility and its constituent elements may well be a function of the fact that magistrates can and do punish but also of a system in which the protections and safeguards associated with natural justice or due process are more evident than in a welfare-oriented administrative tribunal such as the Children's Hearing system.

Though it approaches significance, the correlation between Harm and Social Protection ($r = .298$) as for the panel sample is not statistically significant. It was expected that it would be.

Summary and Discussion

There is thus strong evidence to suggest that panel members, at least as assessed by the case study method, do indeed treat what we have referred to as 'welfare' factors as of more importance than 'judicial factors'. The apparent reluctance of both magistrates and panel members to treat welfare factors in the sociological, biological or processual cases as important contrasts with their treatment of these factors in the psychoanalytic and behaviourist cases. This is not unexpected as we had argued that the involvement of the social work and related professions in the provision of reports, in the hearing process itself, and also in the

very selection process (in Scotland) meant that both panel members and magistrates would readily accommodate social work typifications. (See Asquith 1977, Smith 1977) The argument was only partially confirmed as magistrates ascribed more importance to welfare considerations in the case depicting the behaviourist perspective as more important than in any of the other cases. But the lack of difference between the welfare scores on this and the psychoanalytically based case could well indicate that the importance of welfare factors in these cases is that they highlight breakdown in the normal socialisation process as a cause of delinquency. In keeping with the underlying assumptions of a welfare philosophy it may well be that the ideological attractiveness of construing delinquency in such a way is that the objects of treatment or welfare measures are more readily identified. For that reason alone, sociological and biological factors may not be considered as relevant in as much as they are outwith the sphere of competence and effective action of control agents. It is precisely for this reason that the liberalism of the rehabilitative model has been criticised as being conservative and in the development of 'psycho-social' experts. (Bean 1976)

Magistrates, again not unexpectedly, treat Social Protection as of more importance than do panel members though both are agreed that the case in which it is important is that involving assault on the person. Similarly, panel members do generally treat Harm as being less important than do magistrates, this is subject to some qualification. In two cases (interestingly again Case E involving assault on the person) there is no real disagreement between both groups of subjects. Both treat Harm as important in Case E, the case in which Social Protection was most important. Thus, even panel members do appear to recognise the importance of such factors as Social Protection and Harm given certain circumstances.

Paradoxically in terms of 'personal responsibility', it is in Case E that the most significant difference in the scores is attained, with panel members treating this factor as relatively less important than in other cases. Thus, even though Harm and Social Protection are both considered important this does mean prima facie that they are as concerned about the nature of the child's involvement in the offence. We say prima facie because when the constituent elements of personal responsibility are analysed individually, though panel members and magistrates disagree as to the importance of such factors

as Awareness of the difference between right and wrong and Intentionality, they do not differ materially in terms of the importance they attach to Awareness of the Consequences. Of the three factors, they are in agreement as to the relative importance of this factor and that of all the three factors in question; it is seen as less important than the others. What is important for our purposes is that Intentionality is not only treated as most important of the three by the magistrates but that it is also most important for the panel members. And though the intentionality score is significantly different overall, it is so only because of the very significant differences in relation to the assault case.

The importance of the notion of intent, of deliberateness of choice, is obvious in a system of delinquency control derived from the criminal law in its application to adults. But in a less judicial and more administrative form of tribunal, the significance of intentionality would seem to be diminished by the philosophical assumptions of a deterministic account of delinquency. Yet, nevertheless, what we find here is that there is little disagreement between panel members and magistrates as to the importance of the notion. The limitations of the case study method, though it does attempt to gauge individuals' perceptions of the importance of different kinds of factors, is that we are unable to relate our findings thus far to the actual decision-making process. In particular, the conceptual frameworks of determinism and free-will respectively are not readily reconcilable unless some form of compatibility thesis is adopted. It is in the assessment of information and in the making of decisions about how to deal with children that shifts in frames of relevance will be better appreciated. This is not to argue that the material presented by the case method is not valid. Rather it is a part and means of examining the different frames of relevance in operation in the practical accomplishment of juvenile justice. What we have found in the case studies suggests that those who diametrically oppose welfare and punishment, or law enforcement and welfare ideologies, ignore the complexity of conceptual schemata as employed by the individuals who implement the philosophy underlying social policy. In particular, the importance of 'intentionality' for both panel members and

magistrates is that even within a system based on a deterministic philosophy, it does not preclude the possibility that panel members will on occasion operate within a frame of relevance incorporating the concepts of excuse, mitigation and leniency, as well as being overtly punitive. The fact that magistrates treat personal responsibility overall as more important, however, suggests that we should be very wary of arguing that Intentionality and related factors are perceived by both groups of subjects as being important for the same reasons. We have already argued that the different perceptions of Awareness and Consequences are important for different reasons.

What we turn to now is an examination of the implications of the principal findings from this stage of the research for the making of decisions about actual cases. The conceptual ambiguity inherent in the welfare or treatment approach to dealing with children who commit offences means that any neat distinctions between different frames of relevance may be difficult to maintain. The merit of the case study approach is that it has alerted us to the conceptual complexity of delinquency control as mediated by the assumptions and philosophies of two groups of individuals operating within different control networks. We now wish to examine the relevance of this in a comparison of decision-making processes which are situated within very different administrative and organisational structures.

CHAPTER VIII

DECISION MAKING BY PANEL MEMBERS AND JUVENILE MAGISTRATES

It had been intended from the outset that the case studies should be supplemented by other methods of inquiry. This was particularly so because the case studies were highly decontextualised in that they neither referred to real cases nor were subject to the contingencies associated with the hearing of cases. Moreover, it was important in a study which purported to examine decision-making that some means be developed whereby the nature of the factors influencing actual decisions could be considered. The Case Report forms were designed to this end.¹ The following chapter will also present material on the nature and content of the Interaction at the hearings.

(i) Samples

The samples of actual cases used in the main study were again small, with 30 cases in the panel and 35 cases in the court area. But since each subject completed a Case Report form for each case involved in the study, this meant that 90 Case Report forms were completed by panel members, three for each case; 96 were completed by the juvenile magistrates, nine of the cases in court having been presided over by only two magistrates. The main reason for the small number of cases was the intention to analyse the process of decision-making in the respective systems in as much depth as possible, given the restrictions imposed by the fact that only one researcher was involved. Because a number of strategies were being employed in the research, this had the effect of making the collection of data a lengthy and time-consuming process. On most occasions, the juvenile magistrates, given the number of cases they were often required to hear at one sitting, were only prepared to complete the appropriate forms for one case from each hearing. And in the panel area, the researcher attended many different hearings at which no suitable cases were presented or proceeded

1. A copy is included in the Appendices.

with. There were a number of criteria governing the selection of cases for the study. Since we wished to examine the relative importance of 'welfare' or 'judicial' factors as judged by panel members or magistrates, only those cases where an offence had been committed and where the offender was male were considered suitable. To have included girls would have been to have added additional complexity to the analysis by introducing a further category of variables. Moreover, the cases had to involve 'fresh' charges. This was particularly important in the panel area where, under the terms of the 1968 Act, decisions made about children are subject to review by a panel before but no later than a year after the hearing. Review cases were thus not considered suitable because of the peculiar circumstances of such hearings. At each court or panel hearing, the first suitable case was chosen for the purposes of the study. Because of the criteria governing selection, this meant that in the panel area where there were as few as four cases at each hearing there were a number of occasions when no suitable cases were available. It also meant that in both the panel and court area, the researcher attended a considerable number of hearings.

The difficulty of obtaining a sufficient number of suitable cases was further compounded by the fact that the researcher wanted to include in this stage of the research as many as possible of those panel members and magistrates who had completed the case studies. Since we intended to examine aspects of collective decision-making and not simply study the beliefs and working ideologies of those individuals involved, it was therefore important that those who had been involved in the first stage of the research should also be included in the study of actual cases. This was to allow us to consider the relative influence of the importance subjects attached to certain factors in the case studies on the practical accomplishment of juvenile justice within a collective decision-making process.

A further complicating factor was that the fieldwork for the research had to be completed, at least in Scotland, before May 1975. This additional constraint on the collection of a suitable number of cases was due to the fact that Scottish Local Government reorganisation was scheduled to take place on 15th May. This would have considerably

altered the composition of panel membership, in line with new local-government administrative boundaries.

There now follows a description of the court and panel samples.

Age: The difference in the ages of the boys involved in the cases included in the research was not significant. ($\chi^2 = 6.9399$, $P = .5$, 7 df)

<u>Age</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>	<u>14</u>	<u>15</u>	<u>16</u>
Panel	1	1	3	4	6	7	8	-
Court	-	5	4	3	5	4	7	7

None of the Scottish sample was in the 16-year old category whereas there were seven cases in the court sample who were. The mean ages for the two samples were similar, the mean Scottish age 13.2 (Sd = 1.6206) and the mean age for court boys 13.3 (Sd = 2.1).

Number of Charges: Seventeen of the panel cases had only one charge stated in the ground of referral, and 19 of the court cases similarly had only one offence recorded in the charge. The remaining cases in the respective samples had more than one charge stated. It is only for convenience that we use the term 'charges' since strictly speaking children who appear before a panel in Scotland and who have committed an offence appear on offence referral. The reason for appearance is referred to as the ground of referral whether it be for offence behaviour or for any other reason. The difference between the samples was completely insignificant. ($\chi^2 = .037$, $p = .9$, 1 df)

Previous Offences: There was, however, a significant difference ($\chi^2 = 7.8996$, $p = .001$, 1 df) between the samples in terms of whether the offender had any previous known offences. Whereas 19 of the 30 panel cases did, only 10 of the 35 court cases had previous known offences. The danger of trying to account for this, is that any interpretation of such small samples is based on inference and pure conjecture. Moreover, given what we have referred to as the conceptual ambiguity of dealing with offenders in a welfare-oriented system, the significance of a child's past offence history in the practical accomplishment of juvenile justice is not immediately

obvious. Any attempt to infer how a panel member or magistrate construes past record by analysing what factors were apparently important must be theoretically suspect where no attempt has been made to involve the individual's own interpretation in the analysis. Even in relation to the national statistics pertaining to Scotland the same ambivalence impedes meaningful interpretation of the increasing number of children who appear at a children's hearing on offence grounds, or at the very least those who are referred to the Reporter for those reasons. Is this because more children in 'need' are being picked up by the new system? Or is it because the new system is 'too soft', a factor which in itself accounts for increasing crime figures? It is in the meaning given to such statistics that we more readily appreciate the convergence of penal and political ideology. (See Scotsman 1978)

Nature of Charge: As regards the nature of the main charge, 14 panel cases and 13 court cases involved theft; 10 and 16 respectively involved theft by housebreaking or burglary.

	Theft	Theft x H.B./ Burglary	Assault	Other
Panel	14	10	5	1
Court	13	16	0	6

(The difference overall was significant at the .05 level. $\chi^2 = 9.665$, 3 df.)

Length of Hearing: The average length of a panel hearing was 25.4 minutes, the length of hearings ranging between 10 and 37 minutes. It was more difficult to get such a figure for the court samples, for a number of reasons. Firstly, where a number of boys had been involved in an offence all the co-accused were usually heard in the same hearing, and were present either for the whole hearing or part of it. This in itself hinted at important difference in conceptions of and the accomplishment of justice for children. Secondly, and this provided a major obstacle, the magistrates on occasion could and did retire to an adjourning room either to read reports or to discuss some aspects of the case. No other persons - including the researcher - were allowed to be present when the Bench adjourned and in consequence, it was not possible to include this part of the

decision-making process in the research. The average length of a court hearing was 30.8 minutes (ranging from 14 to 50 minutes), although great caution should be exercised in gauging the significance of this statistic, since a number of children may appear together in one hearing and the bench may retire, as often happened, for as long as twenty minutes.

One of the objectives in the research was to compare the nature of decision-making in the two systems and in particular, to examine the relative contributions of parents and children. For that purpose, in the following chapter on the Interaction in a hearing, a slightly different measure for length of hearing is adopted. The difference between the means of the overall length of panel and court hearings was not significant. ($t = 12.418$, n.s., 62 df)

(ii) Decision-making in Court and Panel Hearings

In analysing the data provided by the case reports, two scores could be computed. In keeping with the logic of the research, the overall aim was to assess the relative influence of 'welfare' and 'judicial' factors in decision-making within different forms of juvenile justice. A 'welfare' score was computed firstly for each subject, which was assumed to reflect the emphasis placed on welfare or judicial factors by individual subjects. This was done in the following manner. Each case report, as discussed in Chapter VI was organised into four main sections, two of which were composed of 'welfare' and 'judicial' factors respectively. The other two referred to (i) discussions specifically about the decision and (ii) the different reports available to the two types of hearing. The subjects had been asked to indicate how important particular factors were by reference to the categories Very Important, Important, and Not Important, with the residual category of Irrelevant. Where subjects considered that certain factors were not on the list but should have been, they were asked to include them and treat them in the same way.

In the analysis, factors seen as Very Important were given a weighted score of 3; those seen as Important a weighted score of 2; and those Not Important, a weighted score of 1. The weighted scores for 'welfare' and 'judicial' factors respectively were then totalled. To obtain a 'welfare' score, the weighted welfare figures were then

computed as a percentage of the total welfare and judicial weightings. Thus, where the total 'welfare' weighting was 28 and the total judicial weighting was 22, the welfare score would be 56. For ease of discussion the welfare score obtained in relation to Case Reports will from now on be referred to as the C.R. score.

There are a number of difficulties with this method of scoring though it did allow for an examination of the factors that were considered important by the panel members and juvenile magistrates for the purpose of decision-making. In particular, such a method does not readily allow us to appreciate the logic-in-use in the making of decisions, in that it is a rather artificial means of analysing the process of decision-making. Moreover, such a method assumes that the resultant aggregate score is a true indicator of the influence of the relative contributions of the individual participants in that process. But the analysis will later include a discussion of the content and form of the decision-making process and as such will hopefully lessen the significance of the Case Report method. However, the merit of the case report method is that it allows the subjects to indicate which factors they considered to be important and in that respect, some progress has been made from that orientation to studying decision-making, which effectively ignored what information subjects considered important and how it influenced their decision. (See discussion of sentencing research in Chapter V.)

With regard to 'how' information affected decisions, as has been argued, much of the logic of decision-making revolves around the reasons given by the subjects themselves for a decision. Though it is obviously important to appreciate which factors are used in decision-making, to ignore the reasons for a decision would be to ignore, as has been earlier suggested, the relationship between information, decision, and frame of relevance. Merely to analyse decision-making by requesting the subjects to indicate which factors were important would be to expose oneself, albeit with minor modifications, to the very criticisms that have been made above of 'black box' sentencing research. Hence, in the Case Report forms the subjects were also asked to indicate the reasons for their decisions.

(iii) Case Report Analysis

Earlier in this thesis, we argued that there are three basic elements to a decision:

- (a) Information;
- (b) Objectives and Goals;
- (c) Knowledge and Assumptions about delinquency.

Our discussion in the preceding Chapter related to the analysis of the case studies in which we examined the extent to which individual panel members and juvenile magistrates subscribed to the different¹ available ideologies². In the analysis of the case reports, we shall be more concerned with a consideration of (a) the factors deemed relevant by individuals in reaching decisions about children and (b) the reasons for such decisions. In that respect, we shall mainly be concerned with (a) information and its use and (b) the objectives and goals panel members and magistrates sought to achieve with reference to the actual cases included in the study.

Our concern with information and its use is twofold. Firstly, in a system of individualised justice where decisions are based on the characteristics of individuals and not simply through the application of some general principle, decision-makers require a wealth of information. Secondly, how individuals interpret information can only be understood by appreciating the frames of relevance within which they operate, and its use is in part determined by the objectives and goals which individuals seek to achieve. A danger of trying to analyse how decisions are made without examining the frames of relevance espoused by decision-makers is that relatively little can be discovered of the process of decision-making. The inadequacy of black-box sentencing research was precisely that it ignored the interpretive and selective activity of those persons with whom rested the responsibility for sentencing.

The information available to both panel members and magistrates is mainly verbal and written though there is another information source which we have elsewhere labelled 'paralinguistic' information (Asquith 1976). In the next Chapter, we are to examine the nature of the discussion in the respective settings, but we are here primarily concerned with what information both groups of subjects considered relevant for the purposes of reaching a decision about a child who has committed an offence.

Case Report Scores: Panel Members and Juvenile Magistrates

Hypothesis I Panel members will ascribe more importance to welfare factors than will juvenile magistrates

With a mean of 69.92 (sd = 15.76) panel members had a significantly higher C.R. score than did juvenile magistrates with a corresponding mean of 51.76 (sd = 19.9) ($t = 6.8301$, $p = .001$). Thus panel members, as the figures based on the 90 case report forms indicate, placed much more emphasis on what we have called 'welfare' factors than did the juvenile magistrates. We shall later examine the importance ascribed to individual factors but for the present we shall concentrate on the overall C.R. scores.

As can be seen in Appendix III, the significant difference between the C.R. scores of panel members and magistrates remained when certain factors were held constant. Thus, an adequate summary of the table would be that in only two instances were the differences in the C.R. scores between the court and panel sample not significant. These were for the (41-50) age category and for those who had completed full-time education by the age of 16. But even in these cases the differences approached significance. ($p = .1$ and $.1$ in both cases.)

An interesting feature of the figures in the table, however, is that, in both groups of samples, those who are members of what we have called the caring professions actually have a lower mean C.R. score than those who do not belong to these professions. That is, though there is no statistical significance in the finding, those who are members of the 'caring professions' in both samples appear to attach less importance to welfare factors than do those who are not. It might have been expected that the reverse would have been the case. The lack of significant difference in the C.R. scores for those who were and those were not members of the caring professions within each sample is repeated in respect of all those tests where other factors are held constant. That is, the generally different C.R. scores between the samples have to be appreciated in the absence of any material differences within the samples.

Even when controlling for the number of charges relating to the offence, the difference between the scores for the two groups of subjects was still significantly different.

Table 1

	Number of Charges		
	1 Charge	1+ Charges	
Panel	72.455 (n = 51)	65.494 (n = 39)	n.s.
Court	52.4307 (n = 52)	51.011 (n = 44)	n.s.
	t = 4.2405	t = 3.0698	
	p = .001	p = .01	

Though the means of 72.455 and 52.4307 for cases with one charge for panel members and juvenile magistrates respectively were significantly different at the .001 level; and though the corresponding means of 65.494 and 51.011 for cases with more than one charge was significantly different at the .01 level, there was no significant difference between the scores within each group of subjects. That is, there was no significant difference between the average scores attributed by panel members to those cases with only one charge and those which had more than one charge. This was also the case for England.

Nevertheless, in both cases the C.R. score for cases with only one charge was greater than that for cases which had more than one charge. The difference in the panel scores is, of course, quite small and too much should not be made of it. But for the magistrates the difference is greater though it does not reach significance. In relation to the magistrates' scores, a tentative explanation could be that with the greater number of charges, more concern is expressed and reflected in the choice of a greater number of judicial factors underlying the decision. Small samples and the lack of statistical significance mean that any such interpretation must be treated with caution. But the fact that there is a significant difference between panel members and juvenile magistrates for both categories of case offers additional support to the major hypothesis.

There is, however, little evidence thus far to suggest panel members do in fact subscribe to a type of 'Tariff' sentencing. Others (Morris et al.1973) have certainly made the claim that the conceptual

ambiguity underlying the control of children who commit offences within a welfare framework is reflected in the fact that the panel members operate within a retributive or more explicit punishment-non-treatment orientation than intended by the legislation. However, we have argued earlier that such claims were made on the basis of an inadequate methodological framework in which the frame of relevance revealed in such studies was determined by the researcher's objectives and goals rather than those of the subjects. What we are concerned with and what we have attempted consistently to examine is the use made of and the relevance of information as seen by the subject. When we come to examine the reasons given for the decisions actually made, we shall find that there is much more evidence that juvenile magistrates subscribe to the more classical philosophies of punishment than do panel members.

Moreover, when the number of previous offences was held constant, the situation was somewhat different, as the table below shows.

Table 2

	No previous offences	One or more Previous Offences	
Panel	68.3617 (n = 57)	72.6326 (n = 25)	n.s.
Court	53.961 (n = 33)	51.1069 (n = 71)	n.s.
	t = 3.692	t = 5.296	
	p = .001	p = .001	

There were again significant differences between panel and court C.R. scores and an absence of significant differences within the respective samples. But whereas the scores reveal a slightly smaller mean (51.1069) for cases in which the child had previous offences recorded than for those without (\bar{x} = 53.961), the opposite held for the panel members. That is, with a mean of 72.6326 for cases in which children had previous offences the panel members recorded the greater importance they attached to welfare factors than judicial factors in such cases. We have to emphasise again however that we are discussing trends and not significant differences. In relation to our discussion in the last paragraph à propos more

punitive considerations, the fact that when controls are maintained for known previous offences more importance is attached to welfare factors in cases with one or more previous offences suggests at least that the importance of this category is not simply that it provides the basis for a more punitive orientation. For panel members operating within a more overtly welfare-oriented system of juvenile justice, such trends may well indicate a greater need for intervention, rather than provide the basis for some form of penal calculus. Morris (1976) has also acknowledged that the more serious the offence committed by a child, the more serious might be his needs. What this highlights once again is the necessity of appreciating for what reasons and with what objectives in mind, individuals reach decisions about children who commit offences. This is because the conceptual complexity of separating 'needs' from 'deeds' is reflected in the semantics of delinquency control, which are riven with ambiguity. The danger of ignoring the interpretive activity of the control agent is that possible shifts in the frames of relevance (Asquith 1977) are ignored in the analysis.

Once again, when controls were maintained for the nature of the offence, the C.R. scores between panel members and juvenile magistrates emerge as significantly different ($p = .01$) in both cases.

Table 3

	Theft	Theft by House-breaking/Burglary	Assault	
Panel	67.003 (n = 30)	70.5122 (n = 42)	74.5728 (n = 15)	n.s.
Court	53.896 (n = 38)	53.828 (n = 58)		n.s.
	t = 2.488	t = 2.801		
	p = .01	p = .01		

Panel members, though they did attach less importance to welfare factors for cases with more than one charge, nevertheless ascribed more importance to such considerations for cases with one or more recorded previous offences. One of the differences between the panel and court samples of cases was that there were a number of

cases in the panel sample involving assault, whereas there were none in the court sample. The panel C.R. score of 70.5122 for cases of Theft by Housebreaking was greater than that for cases of simple theft ($\bar{x} = 67.003$); similarly, the C.R. score for Assault cases ($\bar{x} = 74.572$) was greater than for both Theft and Theft by Housebreaking cases. Even here the differences are not significant and any interpretation of the trends must be treated as little more than an exercise in speculation as a preliminary to examining the Case Report Data in more detail. But one interesting feature cannot pass without comment. In the Case Study analysis we found that the panel scores for Case E, involving the assault, were rather puzzling. What we find here is that of the different types of cases in which we asked the panel members to provide information, actual assault cases received a higher welfare score. That is, more importance was attached to welfare considerations in these cases. Again, we return to the suggestion made by Morris & McIsaac (1978) that, given the concept ambiguity in social welfare for offenders, the seriousness of offence behaviour might be taken only as an indication of the seriousness of a child's needs. Albeit the differences in the C.R. scores within the samples are not significantly different, the trend in the magistrates' scores (in which they ascribe less importance to welfare factors in cases involving more than one charge, more previous offences and to offences ostensibly more serious in nature), implies that the conceptual framework underlying their use of information is derived from a greater concern with more punitive objectives.

In the case studies, magistrates did attach much more importance to more judicially-oriented considerations than the panel members and it begins to appear that this might also be the case with actual cases. The juvenile magistrates operate within an organisational and structural context derived ultimately from a court of criminal law, whereas panel members operate within a system more exclusively concerned with the identification and meeting of needs. The legal ideology that characterises the juvenile court is epitomised by the fact that magistrates must not only decide on how best to deal with a child but also on whether the child did in fact commit the offence or not. Panel members have no such jurisdiction.

Though the juvenile court has been modified in a number of ways - more recently with the introduction of the distinction between care and criminal proceedings - unlike the panels in Scotland, they are still essentially concerned with the question of whether the child committed the offence or not. Moreover, where children are under 14, they may be held criminally and legally responsible though this presumption, as we have seen, is rebuttable. (Sanders 1973) Conversely, and given the fact that children under that age may commit 'heinous' or 'premeditated' offences, this, more than any test of the child's capacity for intentional behaviour, may be taken as evidence of malice aforethought (Sanders 1973); they may in this way be considered criminally responsible. The separation of the two functions of adjudication and disposal in the Scottish system means that panel members are not, at least in terms of the formal ideology of the hearing system, required to have regard to the specific questions of culpability or responsibility. A paradoxical feature of the Scottish system of juvenile justice, however, is that though the Children's Hearing system rests upon a conceptual framework of determinism, in which offence behaviour is seen to be symptomatic or pathological, children may still be prosecuted within a system of justice in which the age of criminal responsibility is in fact lower than in England. Children may still in Scotland be dealt with in a judicial setting in which the conceptual framework of legal ideology is reflected in a concern with intent and criminal responsibility. (See Chapter IV) Even in Scotland the importance of responsibility receives institutional expression.

The relevance of all this is apparent when we examine the influence of the age of the child on the respective sets of scores.

Age and Responsibility

As we have noted above, there was no significant difference between the ages of the children in the panel and the court samples. But when the age of the child involved in the case was correlated with the juvenile magistrates' C.R. score, the coefficient of correlation was $-.3876$ ($n = 96$; $p = .001$). Moreover, the correlation was negative. Thus, the older the child, the smaller was the C.R. score. In other words, juvenile magistrates attached more importance to judicial factors than to welfare factors in the case of older

children. And since the child's age correlated significantly and positively ($r = .3281$) with Length of Court Hearing, this suggests not only that magistrates hold longer hearings with the older children but also that the criteria on which a decision was based were ultimately more judicial in nature.

In a system in which legal responsibility is still an important concern it is perhaps not surprising that the older children are, the less will welfare considerations be regarded as important. The corresponding correlation between age of child and the panel C.R. score was also negative ($r = -.0114$, $n = 90$) but came nowhere near significance. What also has to be remembered is that whereas panel members cannot, in theory at least, avail themselves of explicitly punitive measures, juvenile magistrates can. Juvenile magistrates in fact are required to make what Thomas refers to as primary and secondary decisions (1970). That is, they have to decide first of all whether a case is to be dealt with mainly by welfare or treatment measures on the one hand, or punitive and more judicially-oriented considerations on the other. Only then can they decide on the actual nature of the measure. In some cases, e.g. road traffic offences, their choice as to how to deal with a case is statutorily prescribed, leaving them with little choice over the primary decision. No such limitations are imposed on the decisions made by panel members who in formal terms are mainly concerned with the nature of the compulsory measures of care required, if any, by a child.

What we must now do is to consider the relative importance of specific factors in the decision-making process.

(iv) Importance of Specific Factors

(a) Welfare Factors

Over the 30 panel and 35 magistrates' cases, there is actually little difference in the number of factors treated as having some degree of importance for the making of decisions. The panel members had based their decisions for the 30 cases on a choice of no less than 1152 choices (see Wilkins et al, 1973, for a discussion of the selection of factors in decision-making); the magistrates for their 35 cases had treated 1180 factors as having some degree of importance. These figures are unweighted and simply indicate in a crude fashion the total number of factors considered in some way to be important. It

is only in weighting the figures in accordance with the degree of importance attached to individual factors that they become more meaningful. Table 4 presents the mean weighted scores on the welfare factors. (See following page.)

There are in fact very few significant differences in the importance ascribed to the specific factors by panel members and magistrates. The only significant differences are in relation to the importance attached to the Family as a whole, with the panel members treating this factor as much more important ($\bar{x} = 1.7333$) than the magistrates ($\bar{x} = 1.1075$; $\chi^2 = 13.686$; $p = .005$); the child's character which panel members ($\bar{x} = 1.6555$) considered much more important than did the magistrates ($\bar{x} = 1.1505$; $\chi^2 = 9.9399$; $p = .02$); and the child's Associates which panel members again considered more important than the magistrates (the means respectively are 1.188 and .6021, $\chi^2 = 16.4543$, $p = .001$). With reference to the child's use of leisure time the difference, with a higher panel mean, did approach significance.

What is particularly interesting about these differences is that they refer either to the child or to his family. The re-organisation of social work in both countries had been based on a reconceptualisation of the ideological foundation of social-work practice as much as the need for greater access to social services for the community. The notion of generic social work had relocated the focus on the family as a unit rather than on individuals. What is perhaps surprising about these significant differences is that it would appear that juvenile magistrates attach less importance to the social and personal characteristics of the child and his family than do panel members.

However, this could be countered by the fact that panel members and juvenile magistrates agree on the importance of such factors as the child's relationship with his father, mother and siblings, and also home conditions and parental discipline, all of which have relatively high means. What we also have to remember is that both panel members and juvenile magistrates attached most importance (though there were significant differences between the groups) to the information in the case studies which referred to parental discipline and to the child's relationship with significant adults.

Table 4

Factors treated as important	Mean Weighted Scores		
	Panel \bar{x}	Court \bar{x}	χ^2
5. Relationship with Father	1.8777	1.5376	5.4077
6. " " Mother	1.6222	1.3548	2.4423
7. " " Siblings	.611	.333	4.316
8. Family Unit	1.7333	1.1075	13.686
9. Financial Position of Family	.6	.6989	3.378
10. Broken Home	.3777	.5483	3.426
11. Child's Character	1.6555	1.1505	9.9399
12. Area of Residence	.4555	.5376	n.s.
13. Home Conditions	1.311	1.4301	n.s.
14. Associates	1.188	.6021	.001
15. Parents in Trouble	.1222	.129	n.s.
16. Treated as Delinquent	.1555	.0215	n.s.
17. Leisure Time	1.0111	.7096	.1
19. Parental Discipline	1.688	1.5376	n.s.
35. S.W. Relationship to Family	.8222	.3655	11.816
			.01

Panel members and magistrates also differed significantly in the importance they ascribed to the Social Worker's relationship with the family. The mean panel score of .8222 was much greater than the corresponding court mean of .3655 ($\chi^2 = 11.816$; $p = .001$). A reason for the existence of a significant difference of this magnitude may well be that in the Scottish system of juvenile justice, and as was the case in the panel area, social workers who are either known to the family or who have prepared the social work report are encouraged to attend the hearing. Panel members can therefore more readily appreciate for themselves the relationship of the social worker with the family. In the court area, the function of social work representation to the court was fulfilled by a social worker seconded full-time for that purpose. Only occasionally were those who wrote the reports actually present in court. The presence at a hearing of a social worker with knowledge of a family is a feature of Scottish juvenile justice which one might expect to have implications for what actually takes place during a hearing. But as we shall see later, this did not appear to be the case.

Significantly, both panel members and juvenile magistrates agree on the relative unimportance of Area of Residence ($\bar{x} = .4555$ and $.5376$ respectively), though in most instances the children of both samples of cases came from the more deprived of the areas within the panel and court jurisdictions. Thus, in the situation of making a decision about a real-life case, the operational philosophies of magistrates and panel members received expression. As we had argued earlier (see Chapter VII), it may well not be the case that panel members, or for that matter magistrates, do not consider such circumstances as Area of Residence as altogether irrelevant or unimportant. Rather, within the institutional setting of systems of juvenile justice which adhere to a welfare or treatment philosophy to a greater or lesser degree, the nature and extent of intervention required to deal with such broad social problems as the deprived area is outwith their sphere of influence.

(b) Social Work and School Reports

In all the panel cases some form of social work and school report was available to the panel members, but in England neither

school nor social work reports were available in two cases. As can be seen from the table, there was no significant difference in the importance ascribed by panel members or magistrates to such reports.

Table 5

	Panel \bar{x}	Court \bar{x}	χ^2		p
Social Work Report	1.9777 (n = 90)	2.172 (93)	13.956	n.s.	.2
School Report	1.9777 (n = 90)	1.5591 (93)	10.835	n.s.	.5

When we look at how informative the two groups thought the social work reports were, there is in fact a very significant difference ($\chi^2 = 22.652$; $p = .001$). Whereas 64 magistrates considered the reports to be very informative only 39 panel members did so. Magistrates therefore consider social work reports just as important but more informative than do the panel members. One obvious explanation could be that the quality of the reports south of the border is better than in Scotland. However, the very different administrative and structural characteristics of the two systems may be more important contributory factors. Panel members, unlike juvenile magistrates, may, and in most cases do, have all reports for a case a number of days before the actual hearing. They are therefore able to assimilate the information contained therein and to employ it as the basis for discussion or exploring certain aspects of a child's background during the actual hearing. The magistrates only receive the reports after a finding of guilt has been made and after the pertinent facts of the offence and the case have been discussed in court. Panel members are therefore more directly involved at a personal level in the diagnosis and identification of needs than are juvenile magistrates, many of whom expressed concern at the delegation of real discretionary power away from the courts to the local social services department. Panel members may themselves therefore be more willing to disagree with basic information contained in reports but also have the opportunity of exploring particular concerns further in the actual hearing. For that reason, they may find social work reports less informative and less important than magistrates.

Others have noted (Morris 1976) that panel members rarely disagree with the recommendations made by social workers. Certainly, in our study, on only 11 occasions did panel members disagree with the social worker's recommendation. However, since only three broad decisions can be made, discharge, supervision at home, or residential supervision, there is rather little room for disagreement anyway. What may be more important for panel members is not agreement with the decision but agreement as to the reasons for the decision. We have argued elsewhere that the danger of analysing decision-making from statistical information about outcome is that prima facie similar decisions may be founded upon very different assessments of information and very different objectives. (Asquith 1976) Certainly where there is a greater range of measures available, we would expect more disagreement between individuals, and in our study magistrates disagreed with the social work recommendation on no less than 30 occasions.

There was no disagreement of any significance either in relation to the importance or the informativeness of the school reports. It became obvious from discussions with the panel members and magistrates that they felt that school reports were extremely important but that the quality of report provided was generally of little use. In both the study areas, dissatisfaction centred around the fact that school reports were written on stereotyped questionnaire-type forms. On only 29 occasions did panel members and on 28 occasions did juvenile magistrates, think that school reports were very informative. In the majority of cases, both groups considered the reports to be only fairly informative.

(c) Parents and Children in the Hearing

Panel members and magistrates were asked to indicate how important, if at all, they considered to be the attitudes of the key individuals in the actual hearing. The marked differences are shown in Table

Table 6

	Panel \bar{x}	Court \bar{x}	χ^2	p
Father's attitude in Hearing	1.2777	.978	10.211	.02
Mother's " " "	1.1777	.462	16.874	.001
Child's " " "	1.58	.946	23.207	.001

It would certainly appear that the attitudes of mother, father and child in the hearing are a more influential determinant in the panel than in the court setting. Open and informal discussion was seen as being one of the benefits of an administrative style system of juvenile justice (Kilbrandon 1966), as well as the possibility of parental participation in the decision-making process. It certainly appears to be the case that panel members do in fact ascribe more importance to the role and contribution of parents and children in the children's hearings. We shall later see, in conjunction with this, that the nature of the contributions made by parents and children in the hearing is very different from that of parents and children in court. But for the present, it is perhaps worth speculating as to possible reasons for the difference in importance ascribed by the panel members and the magistrates to the presentation of the parents and children. Magistrates in interview suggested that appearance at court should be something that had 'a salutary effect' on the parents and children. Moreover, they were concerned that proper respect be shown by them to the bench. Now whereas one or two panel members felt that their colleagues were not formal enough in the panel hearing, most of them felt that the atmosphere was more conducive to discussion than the court type of hearing. Two comments can be made. Firstly, panel members may consider the participation of the parents and children in the actual discussion of the case as a crucial source of information.

Secondly, for this very reason, and given that the structure of the Hearings system in Scotland allows the panel member to participate more fully in the diagnosis and assessment of a case, the way in which the parents and children present themselves may be taken to reflect wider considerations, e.g. how the parents relate to the child or to each other and so on. But it certainly appears to be the case, on the basis of the number of court and panel hearings attended by the researcher, that parents and children are given a greater opportunity to be involved in a discussion with panel members than with magistrates.

(d) Judicial Factors

A comprehensive list of the judicial factors can be found in the Case Report form. Only the more significant factors are to be considered here. We have seen in the case studies that panel members appeared to treat social protection, seriousness/harm, and Awareness of Wrong as less important than do juvenile magistrates. Moreover, though the overall Intentionality score was significantly different, this was accounted for by a highly significant difference on that factor in respect of one case study. In terms of Awareness of the Consequences, there was no significant difference. Table 7 shows the relative importance of these factors for both groups of subjects when deciding about actual cases.

Table 7

	Panel (n = 90)	Court (n = 94)	t	p
Social Protection	.3333	.75	6.21	.01
Harm	.1	.304	2.14	.05
Seriousness	.4333	.8586	2.506	.02
Awareness of Wrong	.9333	1.152	2.0008	.05
Awareness of Consequences	.5222	.7282	1.307	ns
Intentionality	.4777	1.0108	2.904	.01

In the case study analysis we found that there were no significant differences between the two groups in their treatment of the Consequences factor. What is striking about Table 7 is that this factor again is not treated differently by the magistrates or the panel members. All the other factors appear to be ascribed very different degrees of importance by panel members and magistrates respectively. For the purpose of our thesis perhaps the most important, and certainly one of the most significant, differences is in respect of Intentionality ($p = .01$). In the preceding chapter, we argued that the lack of difference between the two groups in terms of Awareness of the Consequences in conjunction with very different treatment of Intentionality might reflect differing frames of relevance. That is, whereas there appeared to be a relationship between the Consequences, Awareness and Intentionality scores of the magistrates, among panel members, there was a significant correlation

only between Awareness and Consequences. Our argument had been that Awareness and Consequences may have a different significance/meaning for panel members from that which it has for magistrates. In particular, it seemed reasonable to conclude that panel members were more concerned with the child's moral development than the magistrates, who seemed more concerned with the degree and nature of involvement in specific offences.

In the case report analysis, the difference in the Awareness score is significant, but only at the .05 level. But panel members again consider social protection, harm, seriousness and intentionality to be less important than do magistrates. It will be interesting to speculate how the influence of such factors is reflected in the reasons given by the members of the two groups for the actual decisions made. This will be the focus of concern in the last section of this chapter.

But for the present, the concentration by magistrates on the specific circumstances of the offence is also reflected in a much higher weighted mean for the nature of the offence than panel mean ($\bar{x} = .6555$, $t = 4.89$, $p = .001$). And when we examine the differences in terms of the child's involvement in criminal behaviour and with the formal agencies of social control, the differences are again very significant (at the .05 level).

Table 8

	Panel	Court
Child's first offence	.522	.763
Previous Offences	.433	1.0652

These factors are all much more important for magistrates than for panel members. It would therefore appear at this stage of the analysis that juvenile magistrates may operate to a far greater extent than do panel members, within frames of relevance derived from more traditional punishment ideologies. More particularly, in view of certain claims that have been made (Morris 1976), panel members may not in fact make decisions in reference to some kind of tariff system. We therefore maintained a number of controls with these considerations in mind in comparing the between samples scores. (See Appendix III for complete list.)

Table 9

	Social Prot.	Serious- ness	Harm	Aware- ness	Conse- quences	Inten- tion- ality
1+ charges	n.s.	n.s.	.05	n.s.	n.s.	.1
1 charge	.01	.001	n.s.	.01	.02	n.s.
Theft	n.s.	.05	n.s.	n.s.	.02	.05
Theft x H.B.	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.
No previous offences	n.s.	n.s.	n.s.	n.s.	n.s.	n.s.
1 or more previous offences	.05	.01	n.s.	n.s.	n.s.	.05

What is remarkable about Table 9 is the distinct lack of significant differences between the scores when the factors specified in the left-hand column are held constant. Moreover, what is unexpected is that with reference to Social Protection, Seriousness, Awareness, Consequences and Intentionality, the mean panel scores are greater for those cases which have more than one charge stated than those with only one charge. Thus, whereas the mean panel scores for cases with 1+ charges are .6667 for Social Protection, .8205 for Seriousness, .1794 for Harm, 1.0769 for Awareness, .564 for Intentionality, the corresponding means for cases with only 1 charge stated are .0784, .1372, .0392, .764 and .411 respectively. And in the case of Social Protection and Seriousness these differences within the panel scores are in fact significant at the .001 level. The others are not significantly different and with respect to Intentionality, the difference between panel and court scores for cases with more than 1 charge is only just short of significance. Within the court and panel, however, there are generally very few significant differences.

How, then, might this be best explained? Is it indicative of some kind of tariff decision-making? The danger of such premature conjecture is that it lends itself to the same criticism of superficiality as those claims about the punitive orientations of panel members founded on analyses of the statistics produced annually or

for particular periods in special regions. Similarly, as our philosophical and historical discussion displayed, there is no simple dichotomy between punishment and treatment, or free-will and determinism. Rather, the development of juvenile justice has been characterised by continual attempts to reconcile welfare and punitive objectives. And as we have argued earlier, in terms of the available ideologies, it is perfectly feasible for an individual to be concerned about the serious nature of offending and the need to offer society protection without being committed to punishment. Put in another way, it seems perfectly reasonable for someone to have a concern for societal protection and the nature of the offence, but nevertheless to adopt a working frame of relevance in which children do not conceptually belong to those categories of individuals who may rightly be punished. When we come to consider the reasons given for decisions we shall argue that there is considerable evidence to support this claim.

From our analysis it therefore appears that generally speaking there is relatively little disagreement between panel members and magistrates over the importance of the number of offences, the nature of the offence and whether the child had previous offences. What matters however is the way in which these are considered to be important. It is in appreciating the over-arching frame of relevance espoused by individuals and derived from competing available ideologies that the reasons for the importance of particular sets of information can best be acknowledged. We contended that an important element in decision-making is the objective and goal of the decision-maker. It is to this that we now turn.

(v) Reasons for Decisions

After each Case Report was completed in which panel members and magistrates indicated the importance of specific factors, they were then asked to indicate what the main reasons were for the decision. An interesting feature of this exercise was that since we asked individual panel members to indicate their reason for the decision, it was obvious that apparently similar decisions were made on the basis of very different reasons and considerations amongst the

individuals at a panel or court hearing. We shall return to this at the end of the chapter, but meantime we now present a list of the main categories of reason stated by panel members and magistrates in support of the decisions made in actual cases. (See Appendix III, Table C.)

Table 10

	<u>Panel</u>	<u>Court</u>
Family and Child Welfare Oriented Reasons	111	64
Home/Area Conditions	2	12
Schooling	25	1
Reports	-	8
Nature of Offence and Child's Involvement	23	16
Past Record	7	17
Past Disposals/Measures	11	4
Punitive Objectives	-	23

A number of inferences can be made from these figures. Firstly, juvenile magistrates would appear to justify decisions in terms of punitive objectives more often than the panel members and would likewise appear to be less concerned about welfare objectives. Nevertheless, panel members do also seem to have considered the nature of the offence and the child's involvement in it more than did their court counterparts. Secondly, magistrates have stated in a number of cases that the reports and information contained therein were important determinants of and reasons for the decisions made whereas the panel members did not justify their decisions in this way at all. We are to consider the latter point first because it seems to us that it is related to the former which raises much more important questions related to the main thrust of this thesis.

Panel members would appear to take welfare objectives into consideration much more than the magistrates, since they made much more frequent reference to welfare and family-oriented factors than did the magistrates. It is significant in view of our earlier discussions that though the overall figures are different, magistrates and panel members both stated parental control as an important reason for a decision (21 and 28 times respectively). Similarly,

the low priority given to area conditions is also reminiscent of the fact that the case study which was indicated as providing the least important welfare factors was that in which environmental causes were presented. A possible explanation of the apparent lack of emphasis on welfare objectives in the reasons magistrates gave for their decisions may well relate to the different sources of information in the respective systems. We shall see later the very different interactional processes at work within the court and panel hearings. But we have already seen that the various forms of report are available to the panel members over a much longer period than to the magistrates. This may explain the lesser emphasis placed on welfare objectives by juvenile magistrates, as well as the importance they attach to reports as a whole. However, what we also have to take into consideration is that unlike panel members, the juvenile magistrates can avail themselves of more explicitly punitive measures. We shall now return to consider the fact that panel members make no specific reference to punitive objectives, whereas magistrates do, for different reasons, on no less than 23 occasions.

Of the reasons given by panel members for their decisions, there were more than 40 references to the nature of the offence and the child's involvement in it, the child's past record and any measures the child may have previously experienced. There were, however, no explicit references to punishment in any of the forms discussed earlier in this thesis. All decisions by panel members appeared therefore to have been reached with the child's interest and welfare in mind. But of the 61 references made by juvenile magistrates to those same factors (nature of the offence, etc.) there were 23 reasons given which contained some reference to punitive considerations. Since magistrates can, and do, punish, we distinguished between those cases in which the final outcome was either a supervision or a care order and those in which it was a fine, discharge, attendance or detention centre.

Table 11

Final Outcome	C.R. Score	
Care/Supervision Order	(n = 41)	61.6169
Other	(n = 52)	43.2423
	t =	4.9557
	p =	.001

What we found was that where the decisions made were more concerned with the welfare of the child, as in care or supervision orders, the mean C.R.² score was 61.6169. This was significantly different from the mean of 43.2423 for those other cases. An inference that could be made is that there is then, at least for the juvenile magistrates, a clear relationship between the actual decision and the factors taken into consideration. That is, where the final outcome is a care or supervision order there is a much greater emphasis on welfare factors; whilst where the outcome is more explicitly punitive, there is greater emphasis on what we have termed 'judicial factors'. It would then appear that there are two conceptually different frames of relevance in operation: in one, children are construed as legally, if not morally, responsible for their behaviour and as therefore being eligible for punishment; in the other, the relevance of information about a child's social and personal circumstances is inextricably linked to a decision to commit a child to the care of the local social services. However, as we suggested at the beginning of this thesis, such frames of relevance are ideal-typical in that the difficulty of separating them conceptually may be reflected in the reasons given for a decision. It is also reflected in the fact that there is no clear dichotomy between punishment and treatment in the first place.

There did appear to be evidence of conceptual ambiguity in the magistrates' reasons for decisions. The most clear-cut reasons were those which did in fact refer to a care or supervision order. In all cases, the reasons were primarily to benefit the child or the family

2. This refers, of course, to the Case Report score as discussed earlier in the chapter.

by offering them social work and related services. The only evidence of possible conceptual ambiguity was displayed in a number of cases where reasons given revealed a mixture of punitive and welfare considerations. That is, the child was to be punished but only as a means of promoting his welfare or serving his best interests. Certainly the 'available ideology' of the compatibility thesis would support utilitarian justifications of punishment-treatment. Amongst the reasons given by juvenile magistrates (see Appendix III) utilitarian justifications are prevalent and include the deterrence of the offender, the prevention of crime, and protection of the public. We expected that more explicit reference would be made to social protection, but its omission may be due to the fact that juvenile magistrates, as revealed in discussion generally, accept social protection as an overriding objective in any case.¹ There are few explicit references to retribution; but the greater concern of juvenile magistrates with those judicial factors of intentionality and the nature of the offence, as well as the simple fact that they decide not simply whether but also to what extent punishment should be invoked, mean that in those cases in which punitive sanctions are invoked their decisions are a blend of retributive and utilitarian justifications. As Gordon states, the criminal law is a blend of the utilitarian and the deontological. (1967)

Perhaps the most important points to draw from this section are that juvenile magistrates seem capable of maintaining fairly discrete frames of relevance depending on whether punitive (either punishment-non-treatment or punishment-treatment) or welfare objectives are to be invoked. In addition, and unlike the panel members, they may legitimately avail themselves of punitive sanctions. What, then, of the apparent emphasis by panel members on 'judicial factors'?

What is particularly interesting about the reasons given by panel members is that all of the references made to the judicial or allied factors by them related specifically to information about the offence and the child's involvement in it. Yet there were no overt references made to punitive objectives in the reasons for the decisions. That is, though judicial and allied factors did appear to form the basis for decision-making in some instances, the

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1. This finding, however, by its very nature raises serious doubt about the validity of the research instruments employed in their inability to elicit what was after all stated by the magistrates to be an overriding objective.

objectives which panel members sought to achieve did not include any overt reference to punishment, though there were references made to information such as the seriousness of the offence, the triviality of the offence and so on. The magistrates, on the other hand, stated as important objectives in those cases involving punitive sanctions, the wish to give a short, sharp shock; to deter the offender; to prevent crime; and to protect the public.

The mean C.R. score for cases in which some reference had been made to the judicial factors mentioned was 63.62 ($n = 21$) and was lower than for those in which no such reference had been made with a mean of 71.83. But the mean of 63.62 for cases where the decision had been justified by panel members with some reference to judicial factors was still significantly different from the corresponding court mean of 43.24 ($p = .001$).

Discussion

We have argued in this thesis, on the basis of the case studies and case reports, that panel members and magistrates do not appear to attach the same importance to the notion of Intentionality. Where children are not held morally responsible, they may not justifiably be subjected to punishment. This has been one of the arguments that has underpinned the development of criminal law away from a purely retributive system of justice. In the juvenile court, magistrates do appear to operate within a retributive framework to the extent that they reach their decisions bearing in mind the principles of consistency and proportionality - at least in reference to those cases which either on account of statutorily prescribed guidelines, or because of seriousness, are the subject of punitive sanctions. They are thereby able to separate conceptually the different frames of relevance underpinning punishment and treatment, in part because the structural and constitutional arrangements of juvenile justice in England allow them to do so. The crucial and central category accommodated within these different frames of relevance is that of moral responsibility, whereby those who may be punished can be distinguished from those who may not.

In Scotland, the organisational and structural arrangement is such that the notion of criminal responsibility does still apply with appropriate standards of evidence and proof. This however

applies only within the court structure, since children in Scotland may still be prosecuted - but only in court. (Approximately 3,000 children each year are prosecuted in Scotland.) Similarly, where children deny the facts of the charge, their case is referred to the Sheriff for adjudication. The separation of the functions of adjudication and disposal neatly epitomises the supposed incompatibility of a legal with a welfare ideology.

The fact that, in 90 reasons given for decisions by panel members, there are no explicit references to punishment whether of the punishment-treatment or punishment-non-treatment kind is perhaps then not unexpected within a system which is based upon a deterministic conception of delinquency. On the basis of the case study and case report analysis we conclude that this is because of the very different way in which panel members and juvenile magistrates accommodate the crucial concept of Intentionality. Since panel members appear to treat this notion as less important than do magistrates it is not surprising that there are fewer explicit references to the differing ideologies of punishment.

Consequently, this will have important implications for the interpretation of information about the child's background and his actual involvement in the offence. Magistrates are more concerned to establish responsibility or fault for specific offences - indeed that is one of their functions. They are also required on occasion to operate some form of tariff system to determine the extent to which children should be subjected to punishment whether for punishment-treatment considerations or for non-treatment punishment considerations. Panel members, however, though not concerned to the same extent as magistrates with responsibility and fault for specific offences appear to be more concerned with whether the child is able generally to appreciate the difference between right and wrong, or to acknowledge what consequences impinge on untoward behaviour. The child's past record (see above) may thus well be important for panel members, operating within a conceptual framework of need, in the attempt to construct as meaningful an assessment as possible of whether and to what degree a child is in need of compulsory measures of care. Morris argues (1976) that offence behaviour has an important bearing on decisions reached by panel members in that there is a relationship between such factors as the

seriousness of the offence and the disposal reached. We agree with her in part. But it is methodologically naive to infer from the identification of a relationship between certain factors in a case and the final outcome how people interpret those factors or with what frame of relevance. It tells us more about the ways in which the researcher, not the subject, treats information as relevant. The reasons given by panel members themselves are more significant in the assessment of the relevance of information.

Nevertheless, despite the lack of concern with responsibility in the sense of moral responsibility, it would be naive on our part to suggest that panel members operated only within a frame of relevance underpinned by the conceptual framework of need. In everyday life, for the purpose of ascribing blame or responsibility it makes a difference whether or not an act had to occur and the designation of conformity or deviance depends on this commonsense consideration. The very language of treatment and the technical language of need is not necessarily accommodated within ordinary everyday language in which the notion of fault, right or wrong, is important. Panel members obviously do make a distinction between those cases in which the referral involves an offence and those cases which would formerly have been called care and protection cases. They appear to do so in a number of ways.

Information and its use

When offence criteria became relevant determinants of decisions, then information about the personal, social and environmental background of children may assume a different significance. Information may then be used not for 'explanation' as such but in terms of 'mitigation'. Thus, decisions to put on supervision in the community may be determined not simply by the need for care but because 'it would be unfair to send him to a List D school, especially after what he has been through at home'. Similarly, panel members confess that there are cases when leniency is called for, a concept which it is difficult to accommodate within a process of decision-making theoretically designed to meet need.

Interestingly enough, a similar confusion in frames of relevance also occurs in the juvenile court though not necessarily

by the magistrates. We shall have more to say later about the contribution of the lawyer to the actual hearing of a case but for the present we wish to note that in the cases where lawyers were involved, the mean C.R. score was lower ($\bar{x} = 43.3$) than for children not legally represented ($\bar{x} = 50.6$, $t = 1.0102$, n.s.). Lawyers, in presenting information to the court about a child (see below) spend a considerable deal of time discussing the nature and circumstances of the offence and the child's involvement in it. Moreover, it appears that information about the child's social, personal and environmental characteristics are used by way of mitigation. That is, the information is employed as a means of asking for leniency and as an explanation of the child's appearance in court. The concentration by lawyers in presenting their case on such factors as the offence, the nature of the child's involvement and the nature of the offence may well be reflected in the fact that the mean C.R. score for such cases was 43.3 compared with 50.6 for those without legal representation.

In the juvenile court, the magistrates do have the opportunity to decide upon measures which are based upon overt punitive considerations. The panel members do not and we wish to argue that the fact that they may on occasion accept the validity of notions such as leniency and mitigation reflects an inability to operate entirely within a frame of relevance based purely on assumptions about the causes of delinquency and the needs of children. On occasion

".... you have to be lenient - some offence referrals are just trivial." (panel member)

That panel members do differentiate between those who commit offences and those who appear at a panel hearing for other reasons is also indicated in another way.

Use of Resources

One of the implications of the development of the treatment model in juvenile justice was that the distinction between offender and child in need of care for other reasons should be eroded. Consequently, the resources, especially the residential establishments, were to provide facilities to meet the needs of children who have been referred to the panel system on both offence and other grounds.

However, not all panel members are able to maintain the lack of distinction between offenders and other children simply because the offender is a child who has broken a law. As a result, some panel members are dissatisfied - mainly because of the 'contamination' theory - that they have to commit children in need of care to the same establishment as that to which they send offenders. In this respect, there is then agreement between some panel members and magistrates who wish to keep delinquents and other children separate because, as the following quotations suggest,

"One is on the slippery path to crime and the other is in need of care and protection." (magistrate)

" it's the good ones who would be corrupted. Especially those who are in need of care and protection are likely to be most vulnerable." (magistrate)

One panel member in fact argued that -

"I'd like to be able to select the List D school - according to degrees of badness i.e. make schools graded according to degrees of badness of the offender. Then allow the child to come up through them in different stages."

Panel members, however, are more intimately involved in the decision-making process than magistrates and the fact that there does seem to be confusion in frames of relevance due to the conceptual ambiguity raises a further intriguing question. Hogarth (1973) criticised earlier sentencing research for ignoring the penal philosophy of the judge. What we in turn suggested earlier was that sentencing, or at least decision-making in juvenile court and panel hearing, is in fact a collective process. The issue that this presents then is the possibility that prima facie similar decisions in fact rest on different interpretations of information, are made with different objectives in mind and with different conceptions of what available resources are for. Where there is ambiguity or ambivalence in the working ideologies of the decision-makers, then the decision to send to a List D school can be made by those panel members on the basis of very different considerations. The conflict we traced earlier in this thesis between different models of delinquency or crime control based on differing assumptions about delinquency causation may then be reflected in lay assumptions about what use is to be made of supervision, List D schools, Care Orders, etc. Despite

the change of name, for example, in Scotland, a number of residential establishments still have the reputation (at least in the eyes of some panel members) of dealing with particularly tough boys.

Though we accept the importance of revealing the tacit assumptions of those responsible for implementing systems of social control (see Platt 1975), what must surely be of importance is how individuals collectively reach a decision. As we shall argue in the next chapter, one of the crucial differences between a panel and a court hearing is the way the search for information is conducted. This will also require a discussion of the degree to which individuals, who presumably do not completely share the same frame of relevance, work together in the task of decision-making.

Punishment

As we have seen, amongst the reasons given by panel members for their decisions made there were over 40 references to the nature of the offence, the child's involvement in it, the past record of the child and the previous measures experienced by the child. There were, however, no explicit references made to punishment of any kind. That is, children were not seen as appropriate objects on whom could be inflicted either retributive (punishment-non-treatment) or punishment-treatment measures. This is at least the inference we make in the analysis thus far, though we do argue that the significance for panel members of Awareness, Consequences and Intentionality may suggest that they are more concerned with the moral development of the child. We might then have expected some allusions to the fact that punishment measures could be influential in the fostering of the appropriate moral and intellectual development in children. As suggested by a panel member in interview -

"Punishment after all can be an effective means of treatment."

But the fact that formally panel members ought not to seek punitive objectives may inhibit explicit reference being made to them in a statement of the reasons.

It would, however, be more than foolish to deny that panel members may on occasion, for what they determine to be serious offences, seek punitive objectives. This is particularly so with

reference to those youths whom they describe as the 'thugs'; 'hooligan element' or 'young crooks'. One panel member, for example, when asked to consider whether the panels ought to have more punitive sanctions amongst the options available graphically expressed his feelings thus -

"Make no mistake about it, there will require to be very stern measures introduced involving the police if the present Hearing system is to be really effective in dealing with the group of adolescents who can aptly be described as apprentice terrorists." (Glasgow Herald 1976)

Similarly, panel members may wish to deter other children from delinquent behaviour. There is here, of course, no incompatibility between belief in welfare or treatment on the one hand, and the need to deter on the other, though even this may be expressed rather ambiguously.

"Deterrence comes into it in the overall pattern of the Children's Hearings. We try to deter the child as a means to an end. - Not simply deterrence for its own sake."

Again we must return to this in the next chapter since we will be concerned not simply with what information is sought and used in a children's hearing, but also how. In particular, we will discuss the symbolic use of the hearing itself as one means to inculcating appropriate attitudes in children who have committed offences.

As we argued above, how individuals conceive of the resources available and the use to which they may be put has to be taken into consideration in analysing decisions. Thus, in many cases panel members and magistrates agree that those who have committed offences should not be put in the same residential establishment as children who have experienced other problems. And though not as explicitly as magistrates, panel members will confess their decision to send to a List D school has been influenced by what the child has done; or that the decision to put on supervision at home, rather than sending him to a List D school, has been determined by considerations of leniency and mitigation rather than being directly related to any objective assessment of the child's needs. In that respect, the 'trivial' nature of much offence behaviour may be underpinned by the same logic by which offences are considered serious. That is, just as some panel members may feel that certain offences are too

serious to be dealt with by them (e.g. Rape), so they complain that many offences are really trivial and do not warrant an appearance at a Children's Hearing.

All in all, the mosaic we are beginning to build, particularly of the practical accomplishment of justice by panel members is becoming very complicated. Suffice to say for the present that we believe that as there is no easy dichotomy between punishment and treatment any simplistic comparison of panel members and magistrates ignores the complexity of the available ideologies and the frames of relevance derived from them. It is for such reasons that we preferred firstly to focus on what we termed 'welfare' and 'judicial' factors before examining the practical accomplishment of juvenile justice in two systems which administratively are founded upon different conceptual frameworks. The main difficulty, as we see it, for panel members is that any attempt to resolve the conceptual ambiguity in delinquency control has to be within a system theoretically located, at least formally, within a conceptual framework of determinism.

We now turn to examine the relevance of the thesis thus far for the suggestion we have made that the nature of the panel or court hearing is an important determinant of what information is sought and how it is used.

CHAPTER IX

COURT AND PANEL HEARINGS: 'FORM' AND 'CONTENT'

I. Court and Panel: Basic Differences

Because of the differences in the organisational and administrative structure of juvenile justice in both countries it was expected that the nature of interaction and communication in the panel and court hearings would be very different. Kilbrandon had in fact argued that, because of its formality, the juvenile court was an inappropriate setting for making decisions about the disposal of young offenders. As well as testing the major hypotheses of the study which we have considered in the analysis of the case studies and case reports, we therefore also set out to examine the nature of the decision-making process within the hearing in a court or panel. As we have discussed earlier, we wished to examine the 'content' of the respective hearings (what was actually discussed) and the 'form' of such hearings (what were the major patterns of communication). The hypotheses to be tested were:

Hypothesis III: there would be more open and informal discussion in the panel than in the court hearings

Hypothesis I: panel members would pay more attention in the discussion of cases to welfare factors than would magistrates

The difficulties in gauging the content of the interaction in the hearing situation were compounded in England by the fact that the court hearing, by its very nature, did not allow for communication of a kind comparable to that in the hearings. There were a number of factors which therefore influenced the collection of information in the court and in this respect the analysis of court hearings could not be developed to the same extent as for the panels. The main difficulties were the formality of the court, the practice of adjournment, and the role of the police in prosecution. Let us consider these in turn.

(i) Formality of Court

One of the intentions in the 1969 Children and Young Persons Act was to promote a system of court procedure that was more informal in

nature than had hitherto existed. But in comparison with the Children's Hearings, it was obvious that juvenile court hearings would be more formal than the administrative type of tribunal that was instituted in Scotland. One of the trends that can in fact be traced in the history of juvenile justice in Britain is the continuing attempt to make juvenile court procedure less formal and more easily understood by the child.

Not only was the physical structure of the English court in the study such that informal communication was well-nigh impossible, but the formalistic nature of the hearing process also meant that different participants had their roles rigorously circumscribed by the demands of court procedure. In particular, the parents and children were only allowed to speak at certain points in the proceedings, and only then at the instance or with the permission of the chairman of the bench for the day. The prosecutors, the lawyers, social workers and probation officers only rarely failed to follow the pattern of speaking at the times appropriate to their roles in the court process. If they did so, this would again be at the instance of the bench; and in this respect, the bench, and in particular the chairman, was obviously a crucial determinant of court interaction. What interested us in this connection was whether the actual form of the panel and court hearings actually influenced the content of what was actually discussed.

One thing that must be remembered is that this study makes no claims as to the 'representativeness' of the two areas studied. The court chosen for the study area, for example, was very different from that in which the pilot was conducted. Architecturally and technologically, the court was so structured as to make informal communication impossible. Architecturally, the courtroom was laid out traditionally with a raised dais for the bench, seating for the clerk and specific arrangements for social work, probation and other personnel. Technologically, there were a number of microphones at important locations in the courtroom, not simply for the purposes of acoustics but in fact to record every word spoken. The court, in fact, was only one of two in England and Wales where everything said was actually recorded on tape.

Even the manner of questioning by the bench was different as between the courts used in the pilot and the main study.

Whereas in the court area in the pilot study each member of the bench was allowed to conduct his own questioning, in the main study area only the chairman directed questions at the participants in the hearing. Consequently, the other juvenile magistrates had to convey to the chairman the nature of the question they wished to ask. Moreover, the replies of the parents and of the children had to be directed 'to the bench', even though the question may not have been broached by any of the individual magistrates. It is perhaps worth noting that the rather more 'liberal' approach of the pilot study bench was exercised in the setting of a court which had waived the physical structure and lay-out associated with a court of law, in favour of a less formidable one. Unlike the court in the study area, there was no raised dais for the bench, the parents and children were therefore not separated physically from the bench, but were all seated at the same table as the magistrates. A practice that was, however, common to the courts used in the pilot and in the main study was that social workers and probation officers were not located near their clients - a feature of the hearing which further added to the importance of the bench in determining both the 'content' and the 'form' of the hearing.

(ii) Adjournment

Unfortunately, on a number of occasions the bench actually adjourned, a practice that is common in the court area and not restricted to the period of this study. This was mainly for the purpose of reading reports, or for considering a final decision; and in all instances, the clerk of the court was invited to accompany the magistrates to the adjournment room. The researcher was not allowed to attend with the magistrates in adjournment because this could have been interpreted as 'interfering in the course of justice'. Consequently, this part of the decision-making process was not open to examination. This contributed greatly to what we shall see to be a comparatively low level of interaction in the court hearings.

(iii) The police prosecutor

In the main study area in England, the prosecutor, a uniformed police inspector, had considerable influence on the nature of the

interaction in the court room. In all cases the greater part of the prosecutor's contribution to the discussion took place at the beginning of the hearing when he presented information concerning the child and the offence in question to the bench. Paradoxically, though the prosecutor presented considerable information to the bench, the bench rarely questioned him as regards this information and overall there is in fact little communication from the bench to one who is a key figure in the whole process. The ritualistic nature of the processing of cases in the court allows different participants to present information to the bench at appropriate times without themselves necessarily being addressed to any great extent by the bench. The police prosecutor in particular occupied an important role in the hearing process which he was able to fulfil without there being any continued 'interaction' with the bench. What this indicates is the extent to which the police, as prosecutors in particular, but also more generally, are important agents in the administration of juvenile justice in England and Wales. The dissatisfaction expressed by a number of magistrates at the loss of some of their powers to the social services is paralleled by their concern that the police, who are 'real servants of their court' have numerous restrictions placed on their activities as a result of the 1969 Children and Young Persons Act. Similarly, the separation of probation and social work leads magistrates to conclude that probation officers rightly show more allegiance and loyalty to court than do social workers whose loyalty often rests with the client irrespective of obligations to the court.

The close working relationship between the magistracy and the police may well reflect the fact that both groups share similar, predominantly judicial ideologies. Thus, the apparent conceptual ambiguity between what we refer to as judicial or welfare considerations is expressed institutionally in the form of a social control network where the different bodies involved do not share similar frames of relevance. This raises a number of important questions that we shall later consider about the assimilation of information by those who do not share similar working ideologies.

For these reasons, whereas the interaction schedule was designed to examine the 'content' and 'form' of the discussion in the Children's

Hearings system and the Juvenile Court, the level of discussion and interaction in the court made a comparative analysis in one sense somewhat difficult. On the other hand, the lack of discussion in the court setting was an important feature of the hearing of cases and this was in itself a significant difference from the situation in the panel hearings. It did, however, mean that with particular reference to the contribution of individuals within the decision-making process, the analysis could be extended further in respect of the panel members than the juvenile magistrates. It is, of course, appreciated that the court could not necessarily be considered representative of the courts throughout England but neither is there any pressing reason to consider that it was atypical of many of them. The point we wish to make is that the nature of the court in the study area is itself an important variable in the decision-making process.

II. Interaction: Form

England

Hypothesis: there would be more free and open discussion in the children's hearings than in the juvenile court

What actually constitutes 'free' and 'open' discussion is obviously difficult to define clearly but in view of the criticisms made of the juvenile court in the Kilbrandon report we were particularly interested in the contributions made to the decision-making process by various people, including the parents and children.

Table I below presents the 'form' of the discussion and the contributions made To and By the various participants in the hearing of court cases. The figures are percentages of the total amount of discussion initiated By and addressed To the magistrates. A discussion of the method employed in recording what actually happened in panel and court hearings is included in Chapter VI above. For the actual analysis of the data, the scores were constructed quite simply by treating statements about specific factors separately and totalling how many statements overall had been made about any single factor and by whom. (A copy of the Interaction schedule is included in the Appendices.) The information contained in Table I in fact refers to the overall contribution and involvement of key figures in the court hearings.

Table 1. (Figures are percentages of total discussion.)

		<u>Youth</u>	<u>Parents</u>	<u>Magistrates</u>	<u>Clerk</u>
<u>Statements by</u> <u>Magistrates</u> (N = 159)	<u>To</u>	45.28	22.64	5.1	10.69
	<u>Social</u> <u>Worker</u>	3.14	3.77	-	10
<hr/>					
		<u>Youth</u>	<u>Parents</u>	<u>Clerk</u>	<u>Social</u> <u>Worker</u>
<u>Statements to</u> <u>Magistrates</u> (N = 915)	<u>By</u>	5.68	10.38	.98	3.61
			<u>Police</u>	<u>Solicitor</u>	<u>Others</u>
			40.33	36.5	2

Two rather obvious conclusions can be drawn from this table. Firstly, very little discussion takes place amongst the magistrates in the hearing of a case. Secondly, in terms of the 'form' of the hearings, much more of the discussion is directed to the bench than is initiated by the bench. But equally important for our purposes is the way in which the volume of discussion and levels of participation are distributed amongst the various participants.

Whereas the bench directed a considerable proportion of its statements, mainly in the form of questions, in all cases to the youth (45.28), the youth's contribution To the bench only involved 5.68% of the discussion. Similarly, the parents who were in court with their children were addressed more by the bench (22.64) than they themselves addressed the bench (10.38). What this rather crude means of measurement of the interaction in the court hearing suggests is that there is very little opportunity for free discussion. This seems especially so when one also considers the fact that, whereas the statements to the child and his parents By the Bench involved the greater part of the discussion, the statements to the Police involved a much smaller part (3.77); conversely, whereas the contribution made by the child and his parents to the Bench only accounted for about 16% of the total discussion to the Bench, that of the police involved slightly more than 40%, and that of the solicitors, more than 36%. The nature of solicitors' involvement will be discussed

later, when this will be assessed in relation only to those cases in which children were legally represented.

Again, the ritualistic nature of the court hearing may account for the form of the discussion in that though questions may have been directed at the children and their parents, fuller replies or descriptions of their involvement and backgrounds are actually given by the police, or on occasion by the solicitor. Not unexpectedly, as we shall see, the content of the police contribution to the Bench is heavily 'judicial', which, when added to the low level of youth or parental participation, offers little opportunity for discussing the child's needs or interests. The police concern at establishing the nature of the involvement of the child and the offence in which he was involved means that the predominant frame of relevance is not solely a welfare one.

What the table also shows is that the social worker or, as the case may be in England, the probation officer, takes little part in the actual discussion of a child's case. Of the total volume of statements to the Bench, social work participation accounted for only 3.6%. Two other factors make this low level of contribution a matter for interest. Firstly, the social work interest in a case or potential case is usually the responsibility of a representative of the social services department, and not necessarily the social worker who is or may be responsible for the case. In the court area there was in fact a post of Court Duty Officer. Consequently, the social worker in court would not usually have first-hand information about the case. Secondly, and related to the first, because of the derivation of juvenile court from an ordinary summary court, the juvenile court fundamentally remains a court of law. Therefore, no report or information about a child's background may be offered to the court until the facts have been established or accepted. This means that, in view of the lack of involvement of the social worker in the discussion, the only opportunity for assimilating social work information is by the reading of reports which can only be presented after the facts of a case have been accepted or established. This was done either in court or in adjournment and essentially meant that little time was available, and it is perhaps not without significance that the magistrates found social work reports generally (see Chapter VIII) very informative and very important. The fact

not only that the social worker's contribution was small but also that the Bench addressed itself to the social worker in a very limited manner (3.4% only of all statements made by the Bench were to the social worker) would mean a greater reliance on written information in view of the lack of opportunity for questioning it.

Because of the erosion of magistrates' power in the decision-making process in England, the lower level of social work involvement may reflect a practice in which the nature of the 'treatment' decision is the responsibility of the social services department and not of the magistracy, who must only decide whether a child needs compulsory measures of care. Magistrates do not have the responsibility of deciding what form these measures should take. But perhaps the main point that could be made here is that in relation to the contribution of the social worker, the magistrates rely mainly on written social work information.

The greater involvement of the police has to be discussed in connection with the nature of the part played by the police prosecutor since the 'form' of his contribution can best be analysed in relation to the 'content'.

One further comment that can be made is that the Clerk of the Court appears to play only a small part in the proceedings. Yet the low contribution made by him to the bench must not be used as a basis for arguing that his is not an important role. His role is important in informing the magistrates of the statutory limits within which they can operate and generally keeping them advised of the law. What can be said is that much of his involvement with the magistrates actually takes place in the adjourning room whereby what he had to say was not available for inclusion in the research. More importantly, however, this also meant that it was not available for public hearing in the open court. Whereas it is possible for panel members to adjourn or ask for a period of discussion in the absence of the parents or children, this very rarely happens in practice. Only in one panel area, in the North of Scotland, is the researcher aware of the availability of an adjournment room, but even here most of the panel members felt its use would be contrary to the spirit of the Kilbrandon philosophy.

Scotland

The more obvious difference in the nature of the hearing between Scotland and England is the absence of a police prosecutor and solicitor, and the role played by the Reporter to the Hearings rather than by a Clerk of Court. But there were other more interesting differences which were not accounted for simply by the absence of certain participants in the juvenile court.

Table 2

		<u>Youth</u>	<u>Parents</u>	<u>Other Panel M.</u>	<u>Reporter</u>	<u>Social Worker</u>	<u>Others</u>
Statements by Panel Members (n = 3118)	<u>To</u>	64.27	27.48	6.055	.733	2.982	

		<u>Youth</u>	<u>Parents</u>	<u>Reporter</u>	<u>Social Worker</u>
Statements to Panel Members (n = 2815)	<u>By</u>	53.499	35.84	3.69	5.18

A striking feature of the differences in the interaction in the court and panel hearings respectively (at least for the cases studied in the research) was the far greater volume of statements To and By panel members than To and By juvenile magistrates. Some considerations must, however, be given to the fact that the magistrates in many cases, as in general practice, did in fact adjourn to discuss certain cases. Since the researcher was not allowed, by law, to be present at these discussions, they were completely lost from the study. However, since the intention was to gauge courtroom and hearing activity respectively, the fact that magistrates did on occasion retire is not without significance for the discussion about the difference in levels of interaction between Scotland and England.

Over all cases, the difference in the volume of interaction was highly significant, ($t = 13.353$, $p = .001$). Moreover, the distribution of the volume of interaction in Scotland was markedly different from that in England. Like England's magistrates, a considerable part of the comments and questions made by panel members to others in the hearing were directed to the youth and his parents (64.27 and 27.48% respectively). But unlike the form of the parallel type of discussion in England, the child and the parents

together contributed as much as 89% of the interaction to the panel members, children making the greater contribution of more than 53%. Whilst the greater part of the discussion in the court was accounted for by the participation of the police prosecutor and legal representative, in the panel hearings it was in fact the children and parents who accounted for much of the interaction.

Whereas in court, the rather formal atmosphere and ritualised process did not allow for open discussion involving the parents and the children, in the panel hearings they did appear to take an active part in the decision-making process. Moreover, all three panel members in each hearing were involved more immediately in the hearing, a fact reflected in the greater level of communication.

Since the social work report is available to panel members some days before the actual hearing of a case, the search for information is fundamentally different from that of the court hearing, where only a short time is available for the assimilation of written social work information. The social work report in Scotland may be used by panel members as a basis for introduction to the discussion which can then be used to explore more fully some of the issues and implications raised in such reports. Because of the greater opportunity for discussion, and the freedom of the child and parents to enter into the proceedings of the hearing, social work information can be challenged in a way that is not so possible in the more adversarially oriented juvenile court structure.

Nevertheless, though reports were not seen to be so generally informative in Scotland and despite the greater opportunity for discussion at the actual hearing, social work participation in the interaction was almost as low as it was in the juvenile court, with almost 4% of the overall discussion. But when the separate scores for 'form' to and by panel members are considered, only 2.98 of all the discussion by the panel members is directed to the social worker, though the social worker in reply does contribute slightly more, with 5.18 of the total interaction to panel members. It would be unfair then to suggest that the low level of social-work participation is simply the fault of the social work representatives since panel members seem to direct little of the discussion specifically to them. In many respects this is unfortunate, especially since in the majority of cases included in the research

the social worker actually involved in the case or who had written the report was usually in attendance at the hearing. In view of the intentions of the 1968 Social Work (Scotland) Act, social workers were generally expected to attend the hearings. Thus, unlike the situation in England there was as much opportunity to discuss with the social worker the contents of his report as to read the reports themselves. But this opportunity was little used, with the main question directed to the social worker being of the nature 'Have you anything to add to your report'? It is perhaps more surprising that this should be so in Scotland since the decision as to the need for compulsory measures of care may well include recognition of the qualities of the social worker, as we have seen, and the nature of his report. Nevertheless, most of the responses showed agreement with the recommendation of the social worker.

Despite their apparent lack of involvement in actual hearings, social workers were nevertheless considered by many panel members to be extremely important.

" I wouldn't like to be without the Social Work recommendation - also the social worker has to be asked his opinion in the hearing. I don't like hearings where a social worker is not introduced to the discussion." (panel member)

We might have expected, however, that social workers would have taken more initiative in the actual discussion of the case and of their social work report.

Our conclusion is nevertheless that the panel hearings did allow for a more open form of discussion. In particular, the parents and children were able to contribute more to the actual discussion in what appeared to us to be a more informal and free atmosphere than existed in the juvenile court in the study area. But even this did not meet with approval by all panel members since -

" some panel members make it too informal and relaxed. They forget sometimes what these children have done." (panel member)

What we shall see at the end of this chapter is that the hearing can be used by panel members in much the same way as magistrates conceive of the court - as a symbolic reminder of the fact that the child has done wrong. The very hearing itself can

then 'impress on the child the significance of what he has done', 'have a salutary effect' or can be used to 'let the child know he can't get away with it'. It is in this way that the 'form' and the content of the decision-making process can be seen to be closely related.

III. Interaction: 'Content'

The content of the discussion refers to what factors were actually discussed in the respective hearings. As with the case report scores, the figures relating to the content of a discussion were computed in such a way as to present welfare factors as a proportion of all factors discussed. Thus, the greater the score, the greater the emphasis on welfare considerations.

Hypothesis I: that for the purpose of decision-making panel members will treat welfare considerations as more important than will juvenile magistrates

Our discussion in this section of the thesis will relate not only to the question of what was discussed in the respective hearings but also to the much broader issue of the extent to which the type of hearing influences the search for, and use made of, information.

We have already seen the very great differences in the form of the respective hearings in the panel and the court area. Table 3 shows similarly significant differences between the two groups in terms of content.

Table 3 Mean Content Scores

	<u>Panel</u>	<u>Court</u>	<u>t</u>
To Panel Members and Magistrates	72.71	27.8	p .001
By Panel Members and Magistrates	72.37	15.74	p .001
Overall discussion	72.26	26.16	p .001

The marked differences in the Case Study scores, Case Report scores and the form scores would appear then to be repeated in respect of the Content of the discussion in the hearings. That is, juvenile magistrates in discussing a case do not refer to welfare factors as often as do the panel members. What follows is a more detailed discussion of the extent to which various individuals emphasised welfare as opposed to judicial factors.

(a) Panel Members: Content Scores

An overall summary of the scores attained by the panel members is presented in Table (a) in Appendix IV. Here, only the more salient features of the figures will be discussed.

Panel members who were also chairmen in the hearing of cases in the sample had lower mean content scores (63.22) than did their colleagues who were not chairmen. (71.34, $t = 1.2827$, 88 df. n.s.) Though this only approached significance, the difference may in part be accounted for by the fact that the practice in the cases included in the study, as in others attended by the researcher, was for the chairman to begin the discussion by addressing the child about the offence. The Content score would therefore be influenced by the inclusion of 'judicial' factors as a result of the chairman's role. For reasons that may also be associated with the role of chairman, those panel members also took a greater part in discussion of a case (47.58%) than did those who were not chairmen (25.53%).

That is, not only did chairmen comment more than their colleagues on judicial factors such as the child's involvement in the offence but they also, in view of their role, took a much greater part in the discussion. The fact that those with most experience as panel members (a mean of 38.9) took a greater part in the discussion may well then also be partially due to the fact that the chairmen were selected from the longest serving panel members.

Priestley et al. noted that

"Magistrates pursue the personal dimensions of offence behaviour in two further ways. First by asking for explanations. 'Why did you do this?' is asked so frequently and receives so few replies that its use seems at first sight to be merely rhetorical. But there is a serious purpose to be discovered behind it. The 'causes' of criminal behaviour are often discussed in the reports submitted by probation officers and social workers, but magistrates also appear to be genuinely in search of explanations direct from the horse's mouth." (1977, p.90)

What is particularly interesting about this quotation is that panel members, in their capacity as chairmen, also often initiate proceedings in the hearing by asking the child 'why he did it'. That is, the child is also given the opportunity to present his reasons for his behaviour and in this way much of the early part of the hearings

for the cases in the study was focused on the child's reasons for his involvement. This is, however, not to suggest that the relevance of such considerations is the same for panel chairmen as for the magistrates. Indeed, as we have argued on the basis of the analysis of the case studies and Case Reports, the importance of the child's involvement in the offence may be taken as being more indicative of the child's moral development than of considerations of intent, and responsibility. What makes this more problematic, however, is even the possibility that panel members may consider that the child who deliberately commits an offence, particularly if it is serious in its consequences may be more in need than the child who is 'easily led' or 'weak-willed'.

There is, moreover, further evidence to suggest that the lower content scores attained by chairmen cannot be taken simpliciter to suggest that chairmen are more judicially oriented than their colleagues. When we examined the welfare scores attained by chairmen in respect of the case reports, though on average greater than for other panel members (the means were 72.6 and 68.6 respectively), we found that they were not significantly different. Thus, though the role of chairman in a hearing may well determine the nature of their contribution, such panel members do not appear to have attached any more importance to judicial considerations than their colleagues.

Perhaps the most intriguing difference in the content scores was between those who were and those who were not members of what we have called the caring professions. Those who were had a mean score of 65.12 in respect of the case in which they were involved, which was significantly different from those who were not members of the caring professions, and for whom the mean content score was 76.33 ($t = 1.8539$, 88 df, $p = .05$). That is, members of the caring professions actually discussed welfare factors less in the hearing than did their colleagues who were not. We might have expected the converse to have applied.

(b) Panel Cases: Content Scores

In cases where there had been no previous offences, the mean panel member content score was 69.46 ($n = 57$), whereas in cases where the child had one or more previous offences recorded, the

corresponding mean was 70.051 ($n = 33$). (n.s.) Nor was there any statistical significance in the difference between those scores when the number of charges in a case was held constant. For cases where only one charge was recorded, the mean content score was 68.35 ($n = 51$), and for those with more than 1 charge, it was 69.41 ($n = 39$). It would, prima facie, appear therefore that the 'content' of contributions to the discussions by the panel members individually were not influenced notably by whether the boys had had previous offences recorded nor by the number of charges in the referral.

Similarly, the age of the child did not correlate significantly with the panel members' content scores ($r = -.0951$, $n = 90$ n.s.). What this suggests is that the age of the child made no significant difference to the nature of the discussion in the panel cases where it would appear that issues related to the social, personal and environmental characteristics of the child were given equal consideration. This does, however, conceal the fact that the child's age can be important in the decision-making process and especially so when the child is approaching the age at which he can legitimately be dealt with by the court. Panel members will confess to being aware that the fifteen year-old will soon be under the jurisdiction of the court and allowing this to influence the nature of the decision ("we'll discharge the case because he'll soon go to court anyway") or the presentation of the decision ("we'll discharge the case this time but remember, it's the court for you next time my lad"). However, when the length of the panel hearing of cases was correlated with the content score, the relationship was in fact both significant and positive ($r = .4876$, $p = .01$, 28 df). Thus, the longer a case was discussed in a hearing, the more the discussion tended to focus around 'welfare' as opposed to 'judicial' factors.

In respect of cases of Theft and Theft (x) Housebreaking, the content scores were quite similar with means of 73.76 ($n = 52$) and 74.3 ($n = 30$), respectively, with no significant difference. However, of particular interest is the fact that the mean content score for cases in which assault was alleged was actually much lower ($\bar{x} = 50.21$, $n = 15$). This was significantly lower than the other scores mentioned above. Thus, in cases such as assault, the judicial factors are important aspects in the hearing of a case.

Paradoxically, however, the case report forms completed by the panel members in respect of these cases of assault produced a mean Case Report score of 74.57 which was in fact the highest welfare score when we controlled for type of case. Though discussion in assault cases was indicative of concern with 'judicial' features of a case, this did not preclude the possibility then that 'welfare' factors would provide the basis for the making of a decision about a child involved in that case. The significance of this will be more apparent when we discuss the fact that though a welfare philosophy appears to support the decisions made by panel members, the actual hearing process nevertheless retains a 'symbolic' element more akin to retributive or utilitarian ideas of punishment.

(c) Panel Cases: Major Factors Discussed

The content scores overall did indeed substantiate the hypothesis that panel members, to a greater extent than magistrates, lay more emphasis in discussion on welfare factors. An examination of the relative influence of the individual factors provides further support for such a claim. On the basis of the Interaction schedules, Table 4 outlines the major factors that were discussed and the number of times they were discussed in the course of the hearings. This exercise was designed simply to examine the importance of particular factors in the discussion of cases. On its own, the table would of course present no more than a crude total of the frequency specific factors were discussed; its significance, we suggest, is in the way in which it relates to other elements of the analysis.

Table 4 Major Factors Discussed

Schooling	619
Circs. of offence	354
Possibility of discharge	148
Associates	147
Leisure time	142
Motives/reasons for offence	102
Parental discipline	68
Career prospects	90
Home supervision	73
Residential supervision	72

What is particularly interesting about the list is that most of items referred to relate specifically to the child either in terms of his involvement in the offence or in terms of his personal circumstances, e.g. schooling, leisure time etc. Earlier, in both the Case Study and the Case Report analyses we discovered that both panel members and magistrates were reluctant to treat more social and environmental considerations (E.g. the area where the child lived) as important.

The fact that 'the circumstances of the offence' and the child's reasons for the offence appear high in the set of factors discussed by the panel members has to be analysed in the light of the other factors that were considered important enough to be discussed often. Magistrates for example discuss the same 'judicial' factors but very rarely discuss, at least in open court, more 'welfare' oriented considerations. Thus, it is our belief that panel members, who operate more than do magistrates within a welfare frame of relevance, seek to interpret such factors in such a way as to give a fuller picture of the child's presenting problems. They do not concern themselves so much with the specific act or offence in abstraction from the child's general behavioural problems.

It is perhaps no surprise that the most often discussed factor, in view of its importance in the Case Reports, was 'Schooling'. In discussion with the researcher and in presenting reasons for their decisions, panel members identified truancy and school difficulties with delinquency and other behavioural problems generally. Indeed some of the magistrates even conceived of 'truancy' as 'delinquency'.

An important aspect of the list of factors actually discussed is that considerable discussion took place with reference to the actual decision itself. For example, the 'Possibility of Discharge' is one of the most frequently discussed factors of all, with 'Possibility of Home Supervision' or 'residential supervision' also being prominent. It would therefore appear that a panel hearing, by its very nature, allows parents and children to have the opportunity of at least being aware of, it not completely involved in the discussion, the kind of decision being contemplated by the

panel members. In commenting on the merits of the Children's Hearings system, one panel member felt -

" we are lay people who have to endure the same stresses as people we're trying to help I can speak the same language that the child and parents speak. The informality must help in reducing the strain and allow parents and children to be involved in all aspects of the case";

and another remarked -

" what happens in the hearing is as important as the decision we reach if parents can leave the room feeling less aggrieved, less hostile and with some dignity, we've achieved something. We at least try to win them over to see what we are doing - this must surely be better than the court."

What panel members then appear to seek to achieve is an atmosphere which allows the parents and children to participate even to the extent of involving them in discussion about the most appropriate means of disposal. When we examine the findings for the court hearings we shall see that not only does less discussion take place but that it also covers a smaller range of topics.

Court Cases: Major Factors Discussed

Table 5 presents a list of the major topics discussed in the court hearings.

Table 5 England

Circs. of offence	82
Reasons/Motives	16
Seriousness of offence	5

As we can see this is a much more limited list than the corresponding one for panel hearings. Any other factors were referred to only minimally by the magistrates reflecting both the concentration of magistrates on more judicially oriented factors and also the much lower level of discussion in the hearing of a case in the court area. The obvious difference with the panel hearings is that there is in fact little discussion by the magistrates, and

that usually means the chairman of the day, of factors other than judicial ones. This is not to say that other factors are not discussed. There are two reasons for this. Firstly, the research was bedevilled by the fact that the magistrates often adjourned, which meant that that stage in the hearing was not available for analysis.

Secondly, what these figures represent are the factors mentioned in the statements made by panel members and juvenile magistrates respectively. They do not contain any reference to statements made by others. Indeed, the differences in the content and form of the discussion of cases by panel members and magistrates point to more fundamental issues relating to the nature, the source and the use made of information available to those responsible for making decisions in the two systems. In particular, the more formalised and ritualistic nature of the juvenile court allows personnel other than magistrates themselves to determine the nature of the information provided.

We suggested above that panel hearings did allow for more open discussion involving both parents and child. What is equally important, however, is the nature of the participation by these key figures and it is to a consideration of this that we now turn.

Parents and children

We have seen that the overall content scores were significantly different as between the panel and the court samples. The greater emphasis placed on welfare factors by panel members appears to be reflected in the content of the children's and parents' contributions to the discussion, as in the comments directed to them by the panel members. For panel members, the Content¹ scores were 62.47 to the child and 83.49 to the parents. (N = 90 in both cases) In other words, the greater part of the discussion with the child and his parents focused more on the child's social, personal and environmental circumstances than on more judicial aspects of the case. That the panel content scores are lower for children than for their parents is not unexpected since it was

1. What the content score referred to was the extent to which welfare factors rather than judicial factors were discussed in a hearing.

usually the case in discussion that questions were initially directed to the child concerning the offence.

But just as important was the fact that the Content of the actual contributions to the discussions by parents and children was also high. They too were prepared to discuss the child's background and not just concentrate on the offence. The mean content score for parents was 82.91, and for children it was 60.46. Table 6 presents both the content and form scores of children and parents.

Table 6

		<u>Content</u>	<u>Form</u>
Child	To Panel	60.46	53.49
	To Child by Panel	62.47	64.27
Parents	To Panel	82.91	35.84
	To Parents by Panel	83.49	27.84

What we can see then is that parents and children in panel hearings are active participants in that they contribute a lot to a panel discussion (form) but that they also focus more exclusively on welfare factors in their discussion. This does not necessarily mean that they themselves are committed to welfare frames of relevance. As we have argued earlier in this thesis, the language of therapy or treatment is not readily compatible with ordinary, commonsense moral discourse. Similarly, though the aim was to achieve a panel membership that was both suitable and representative, Mapstone (1972) argues that if membership were truly representative then the attitudes and beliefs expressed by panel members would be more reactionary, conservative and punitive. For Mapstone, the attitudes to crime and delinquency expressed by the general Scottish public are not those which would necessarily lead to the successful selection of particular individuals. But the main point to be made here is that no a priori assumptions about parents and children's assumptions about justice and delinquency control can be made; empirical research is necessary to establish the tacit assumptions commonly held by different sections of the community. (Petch 1977; Morris & Giller 1977.) The influence of the Calvinist ethic on Scottish morality suggests that any inference as to the

extent to which the parents and children in this study are committed to a welfare ideology has to be treated with caution. (Asquith 1977.)

In all probability the greater concentration of parents and children on welfare factors may be attributable to a variety of reasons, not least that their contributions are determined by what panel members wish to discuss. But whatever the reasons, the greater part of the discussion in panel hearings was accounted for by the children and parents whereas in the court hearings discussion was dominated by the police prosecutor and the legal representative.

Legal Representation

The importance of including this in the analysis is that (i) the question of legal representation epitomises much of the conflict we have attempted to identify between what we called judicial and welfare modes of thought and has implications for claims that children in the hearings system should be legally represented; (ii) it also has implications for the confused state of the right of appeal against a decision made by a children's hearing in Scotland (Grant 1976; Gordon 1976) where the right of appeal against a decision made by lay persons actually rests with the judiciary.

It was difficult to make meaningful interpretations of most of the content scores because of the simple fact that so little discussion actually took place in the court areas. Nevertheless, some comment can be made on those cases where children were legally represented. It is important to point out that these were not cases which in Scotland would have involved referral to the Sheriff. That is, they are not cases in which children had denied facts but are those in which the lawyer's task was to represent the child and present the case.

Of the 34 cases in the English sample, children were legally represented in 13, analysis of the form of which is presented in Table 7.

Table 7Statements to the Bench by:

<u>N.</u>	<u>Youth</u>	<u>Parents</u>	<u>Magistrates</u>	<u>Clerk</u>	<u>Social Work</u>	<u>Police</u>	<u>Lawyer</u>
56	0	0	0	0	0	21.43	78.57
55	0	0	3.64	0	0	40	54.55
41	0	0	2.44	0	0	43.9	53.66
38	0	0	0	0	0	15.79	84.21
32	0	0	0	0	0	18.75	81.25
51	0	1.96	0	0	1.96	19.61	76.47
45	0	0	0	0	0	37.78	62.22
43	0	0	0	0	2.33	11.63	86.05
18	0	0	0	0	0	33.33	66.67
45	0	0	0	0	0	28.89	71.11
36	0	0	0	2.78	5.76	25	66.67
13	0	0	0	0	0	69.23	30.77
14	0	0	00	0	0	71.43	28.57

The most interesting feature of the representation of children in the few cases in this study is the significance of the lawyer's contribution in the hearing of a case. In all the cases where a child was represented legally, the child himself made no actual contribution to the discussion, the greater part of which, in all but one of the cases, was accounted for by the participation of the lawyer. Moreover, the overall mean contribution of solicitors in the study cases was as much as 64.48%, reflected in the fact that in such cases, police interaction in addressing the bench was only 33.59%. The situation as regards cases where there was no legal representation was that the police contribution overall was 56.06%, a significantly different proportion.

But whereas the greater part of the discussion to the Bench is made by the legal representative of the child, it was important to consider not only the 'form' of the solicitor's contribution but also the 'content'. That is, though the level of his contribution was acknowledged, it had yet to be assessed where the focus of the solicitors' contribution rested.

Over all the 13 cases where legal representatives were involved, the mean content score was 38.21, indicating a rather greater emphasis on 'judicial' factors than on 'welfare' ones. What is equally interesting is that these 13 cases involved a greater volume of interaction directed to the bench than in the cases where there had been no legal representation. The 'represented' cases had had a mean of 37.4 units of information, whereas the others had only 19.57 units of information. Thus, where there was legal representation, there was overall a greater volume of discussion directed to the bench, the greater part of which was offered by the solicitor. This discussion however focused more on the offence information than on the child's welfare. Their main concern was with clarifying the nature of the child's involvement in the offence. What observation at the hearing of the cases afforded was the opportunity to appreciate the use of the information made by the solicitor and though it would be more than unfair to suggest that the solicitor did not take the child's welfare into consideration, some comment can be made at this juncture on his presentation of information.

On occasions where the child's background characteristics were revealed to the court by the solicitor, this was used not to construct an argument relating to the child's needs or interests in arguing for an appropriate disposal of the case. Rather, it was used within the court predominantly as the basis for an argument for the modification of any sentence intended by the magistrates. The 'modification' usually took the form of asking the court to show leniency or to accept the mitigating circumstances of the child's background, such as coming from a deprived area, poor family etc. That is, though background and 'need' information was being used, its use was determined more by a conceptual framework espousing legal and judicial values with its greater emphasis on notions of responsibility and culpability. The concepts of mitigation, excuse and leniency are more readily located within a frame of relevance based on responsibility and punishment rather than on one of need. But with the shift in frames of relevance from 'need' to 'offence' criteria, there will also occur a subtle shift in the interpretation of the personal, social and environmental characteristics of children who commit offences. Legal and judicial ideology highlights notions of intent.

Since there remains a right of appeal to a Sheriff in Scotland, it is important to consider the extent to which judicial and welfare modes of thought are compatible within the same system of juvenile justice. Elsewhere we have argued that judicial review of welfare decisions about children is problematic, a claim supported by the fact that the judiciary themselves are in disagreement over when to allow an appeal. (Asquith 1978) The point we make is that in the juvenile court system, the presentation of information by a lawyer about a child, though it may make reference to prima facie welfare considerations, is founded upon a predominantly judicially oriented frame of relevance. Accordingly, the interpretation of information about the child's social and background characteristics is made within a judicial frame of relevance in which leniency and mitigation form part of the conceptual configuration. Interestingly enough, as we have seen, a number of panel members also operated with such concepts indicating that they did not subscribe completely to welfare considerations. But one wonders whether the involvement of the legal profession within the framework of the Children's Hearing system, albeit in the interests of the child, would alter the practical accomplishment of juvenile justice.

But on a wider level, this has as much significance for the acceptance of a system of juvenile justice based on welfare by the community. Criticisms of softness and unfairness, as with leniency, may be made by those who, for their part, view delinquency control in terms of punishment and justice.

As regards legal representation, an important feature of the 13 cases in England, without exception, was that the contribution made to the Bench by children was absolutely nil, whilst parents only made a contribution in one of the cases. And yet, as can be seen from Table 7 the bench initiates little interaction with the solicitor, whose role in the structure of the court proceedings was fairly rigidly determined by convention. Consequently, there was an allotted time at which it was appropriate for him to present his information before the court, and as such he did not even require to be invited by the bench to speak. But more importantly, the presence of the lawyer, who may have only seen the child just before

the hearing, would appear to obviate the need for the child and his parents, if present, to speak and present their own case. As can be seen, children and parents contributed very little to the discussion.

Police

Where there was no legal representation, the greater volume of statements to the bench was, not surprisingly, made by the police prosecutor whose duty it was not only to present information about the child's involvement in the offence but also about his background. Although the police make a large contribution to the discussion to the bench in all the 34 cases ($\bar{x} = 40.33$), only 3.14% of the discussion from the bench was directed to the police prosecutor. Similarly, the statements directed to the solicitor (in the cases where one was involved) by the magistrates was almost negligible. Neither the prosecution nor the defence required to be introduced into the discussion by the bench since, despite the hopes of the 1969 Children and Young Persons Act, it was expected that they knew when was the appropriate time to speak. That is, the 1969 Children and Young Persons Act had not removed the air of ritualism associated with the adversarial nature of criminal justice. Certainly, informality would be difficult to achieve in a system where uniformed police operated; where the bench was physically removed from the body of the court and where children and parents could only speak when requested or with permission from the bench.

Clerk of the Court and Reporter to the Children's Hearings

What is obvious again, even restricting the analysis to those cases in which lawyers were involved, was that the clerk of the court actually played little part in the proceedings in open court (see Table 7). But again we would not underestimate the role played by the clerk because of the fact that much of his involvement in a case took place in the adjournment room with the magistrates. The magistrates themselves acknowledged the debt they owed to the clerk because of his guidance in legal matters.

Interestingly enough, the Reporter in the panel hearings also played little part in the proceedings apart from on occasion reading, and even interpreting, the grounds of referral to the child. This,

however, was not typical of the role played by the Reporter in different areas in Scotland. In some areas, the chairmen of the hearings were expected to put the referrals to the child, whereas in others the Reporter fulfilled this function. But whatever practices were adopted have arisen by convention and are not statutorily prescribed. Indeed, an examination of the 1968 Social Work (Scotland) Act will reveal that the actual duties and responsibilities of the Reporter are vaguely defined. In at least one respect, the role of Reporter epitomises the conceptual ambiguity between the judicial and welfare frames of relevance in as much as it is his job on the one hand to decide whether there might be need for compulsory measures of care and therefore an appearance at a hearing, and on the other to ensure that the statutory requirements relating to the actual hearing have been met.

Panel Members and Magistrates

As all questions from the bench were directed through the chairman for the day, there was little interaction in court amongst magistrates. There may obviously have been more in the confines of the retiral room, but in the courtroom itself it was negligible. Of the interaction that did take place between the magistrates, the physical separation of the bench from the body of the court made it difficult for the researcher, and undoubtedly the child and his family, to hear what was actually said. But more surprising is that within the more informal structure of the children's hearing, though panel members did discuss features of a case with the child and the parents, there was little actual communication between panel members during a hearing. This does not mean, of course, that individual panel members ignored the interaction of other panel members, but that there was little attempt to test each other more precisely about impressions of what were considered relevant pieces of information and why.

This raises an intriguing possibility. In both systems, individual panel members and magistrates do, of course, on occasion disagree with the actual decision reached about a child; the decision need not be unanimous since a majority is sufficient. There is then explicit disagreement expressed about the decision. However, just because a decision is *prima facie* unanimous, this

does not necessarily mean that the decision has been reached on the basis of the same information, on a similar interpretation of the information available, nor with the same objectives in mind. We have already seen that between the two groups there is considerable disagreement as to the importance of a welfare frame of relevance and sufficient evidence to suggest that within groups, especially the panel members, the welfare orientation is qualified in a number of respects, e.g. by considerations of leniency, mitigation etc. We have also argued that information is only relevant in so far as it is assessed within a particular frame of relevance. Yet we have seen that in the actual hearings and the process of decision-making there is very little communication amongst panel members and magistrates prior to the reaching of the decision. Operating then with possibly different assumptions about the causes of delinquency, the most appropriate measures of delinquency control and about the functions of the available resources, apparent consensus and unanimity may well conceal greater disagreements than actual agreement. The process of decision-making in both the court and the panel hearings is theoretically a collective enterprise. What earlier research into 'penal philosophies' and 'the human element in sentencing' (see Chapter V) ignored was that decision-making, especially in the lower courts was a collective process and that the making of a decision was a complex social accomplishment involving a number of people.

The interesting question that this raises, but which we can not go into in detail here is whether in fact parents and children themselves, who may well operate within more judicially oriented frames of relevance (i.e. more concerned with intentionality, responsibility, fairness etc.) actually truly become involved in the decision-making process. We have already seen that at least one panel member felt that a merit of the Scottish system of juvenile justice was that parents and children could become fully involved in the decision-making process. Thus, parents may ostensibly agree with the decision, but for reasons little to do with welfare consideration. An example would be where a child was sent to a List D school by panel members ("because he needs a structured environment") and where the parents agreed with the decision ("because it's no more than he deserves").

Nevertheless, by comparison with the court hearing, we would argue that, on the basis of the evidence available to us thus far, there does appear to be more scope for the involvement of the children and parents in the discussion in a panel hearing. In terms of the 'form' of the discussion in the panel hearings and the court hearings, Hypothesis III receives confirmation inasmuch as the Scottish system allows for greater involvement of the parents and children. And in terms of the 'content' scores, panel members pay more attention in the discussion of a case to welfare factors, lending support to Hypothesis I and in keeping with the conclusions in the last two chapters.

Symbolic character of Hearings

Before we end this section on the actual hearings themselves, it is perhaps worth commenting on how appearance before a court or a panel may be used as a symbolic reminder to the child that he has done wrong. We argued earlier in this thesis that symbolic denunciation of offence behaviour was associated more with traditional theories of punishment, in its pure form, than with treatment or welfare considerations. Indeed, one of the arguments made by early advocates of the Scottish system was that it would allow for the eradication of the stigma associated with court appearance.

In the court area, we have already seen that the participation of key personnel in the hearing is circumscribed by a fairly stereotypical protocol for court hearings. Much of what Carlen (1976) has had to say about magistrates' justice could be seen in the study court where formalism and the 'majesty' of the court served to prevent normal social intercourse. The magistrates themselves also argued that the very appearance of a child before a court should be sufficient to 'bring home to him just what he has done'; or 'have a salutary effect on the child'; or should 'deter others'. That is not to be completely unexpected in a system of justice where punishment of children is still a recognised, legitimate objective. h e

But what was interesting was that panel members have also evolved their own informal strategies for conducting hearings of offence cases. We have noted the ambivalence of panel members over the difficulty they experience in separating the relevance of

'offence' and 'need' information. This is perhaps easier for magistrates in a system which recognises that punishment is a legitimate aim. Panel members do confess to differentiating between children who appear for offence reasons and those who appear for other grounds, in that those who offend have broken the law. It would appear to be such an approach to delinquency control which underlies the demands that panel members make for the provision of separate establishments for offenders and non-offenders and for more powers to deal with 'hard cases'.

(See above p.275)

Even where the use of punishment is not explicitly stated, the shift in the frame of relevance to one which attaches more emphasis to offence criteria also has implications for the way in which the hearing itself is conducted. The fact that delinquents have committed an offence and have broken the law also determines the posture adopted towards offenders by panel members. Bean (1976) has noted the fallacy of moral neutrality claimed by the proponents of the treatment approach and has suggested how moral evaluations mediate the diagnostic terminology. The commonsense distinction between delinquents and other children who appear before a hearing is also reflected in the adoption of a moral posture by panel members. This is not only in reference to those children who are the 'real delinquents' or the 'serious offenders', but occurs regularly in any instance where an offence has been committed. The hearing is used as a symbolic reminder to the child that he has done wrong and serves the function of delineating the parameters of delinquency and conformity. In an attempt to bring home to the child 'the seriousness of what he has done', panel members may deliberately take steps to endow the hearing with an air of formality, despite the promise of the Act. Indeed, some panel members feel that hearings ought generally to be more formal affairs so that not only children who appear before the hearings but also the wider public may acknowledge the seriousness of an appearance on offence grounds. Tactics adopted in an attempt to make the decision more formal vary between panel members and different panels, but include such strategies as lecturing and evoking a sense of shame. Despite the formal intention of the legislation, there are elements in children's hearings more generally

associated with forms of 'degradation ceremonies'. What is particularly interesting about such tactics is that they may even be employed where considerations of need are paramount or even where a decision has been made to discharge a case, and are not reserved for cases which are conceived as being more serious in terms of offence behaviour. Even where punishment is not an explicitly stated aim, this does not rule out the use of shame, its moral and social analogue.

We have already seen that amongst the reasons given by panel members for decisions there was no explicit reference to punishment whether it be in terms of pure punishment or punishment-treatment. However, in the summing up by the chairman, children are warned about their behaviour, lectured about the seriousness of appearance before a panel, and even on occasion threatened with possible committal to a List D school. Thus the public announcement of a decision to the child and to his parents, even, it would appear, where children are to be discharged, is often accompanied by warnings about the possible consequences of further offence behaviour.

It has not been possible, given the scope and limitations of this thesis, to subject the hearing process, whether it be in a court or a panel system, to a complete analysis. However, the significance of the present analysis has been to identify important features of the process of juvenile justice within a structure and setting derived from a court of summary jurisdiction and one which is best described as a form of administrative tribunal. By examining important aspects of the actual hearings, we have been able to make some comment on the practical accomplishment of a welfare philosophy within different administrative structures. It was in terms of the absence of such information that we criticised earlier approaches to sentencing research.

Case Studies, Case Reports and Content Scores

An important consideration in this research was that the methodological strategies should allow for some examination of different aspects of decision-making within two different systems of juvenile justice. Our main concern at this stage is to consider

the extent to which the different types of hearing, court and panel, influenced the nature of the decision-making process as a whole. To allow us to develop our argument we shall first discuss the relationship between the findings derived from the various stages of the research. In particular, we shall focus on the relationships between the Case Studies, Case Reports and the Content scores.

The adoption of a number of different strategies was an attempt to progress from that approach employed in sentencing research which can most appropriately be referred to as the 'black box' model of research. Thus, the simple guiding factor was, as far as possible, to allow the subjects themselves to provide information as to which factors influenced their decision. Once again, due to the characteristics of the court hearings, the analysis for magistrates cannot be developed as fully.

The 90 Case Report and 90 Content scores in respect of the 30 cases in the Scottish sample were correlated with the panel members' Case Study scores. The resultant matrix is presented in Table 8.

Table 8 Panel Scores

	Case Study				Case Report	Content
	Welfare	Social Protection	Harm	Personal Responsibility		
Welfare	-					
Social Protection	-.415	-				
Harm	-.505	.171	-			
Personal Responsibility	-.825	-.059	.131	-		
Case Report	.079	-.020	-.052	-.067	-	
Content	.028	.005	-.205	.048	.224	-

We have already noted that the panel Case Study scores and the Case Report scores were both significantly different from the respective court figures. That is, with a welfare mean of 43.36 for the Case Studies and a Case Report mean of 69.92, panel members indicated the greater importance they attached to welfare factors and

considerations than did juvenile magistrates. Yet when we examine Table 1 above, we find that there was no significant correlation between the Case Study welfare score and both the Case Report and Content scores ($r = .079$ and $.028$ respectively). This was both unexpected and disappointing. In all three stages of the research, the panel members had treated welfare considerations as much more important than did the magistrates and we had expected that the findings based on the Case Studies would bear some relationship to the criteria upon which actual cases were dealt with and on the nature of the case hearing itself. But although the welfare scores in the case studies were also significantly different between the two groups, the only significant relationship as regards welfare considerations is between the Case Report and the Content score ($r = .224$, $p = .05$ with 88 df). Thus, the high welfare score in the Case Reports is reflected in and correlated with the high content score, indicating that the criteria upon which a decision appears to be based in an actual case is closely related to the nature of the discussion. Reflecting the overall lack of correlation between the Case Study welfare scores and the other scores, even when such factors as sex, age, experience etc. of the panel members were controlled for, there were in the main no significant correlations, apart from those that existed between Case Report and Content scores.

What is interesting about all this is that the lack of correlation is between the scores for the constructed cases on the one hand and the scores for actual cases on the other. The reason for the lack of association between the three types of score may well then be related to either the construction of the Case Studies or to the process of their completion. We shall return to this after briefly discussing the juvenile magistrates' scores.

Because there was little actual discussion in the court hearings, it was only possible to examine the relationship of the juvenile magistrates' Case Study and Case Report scores. In brief, the lack of significant correlation between these scores for panel members was repeated in relation to the magistrates. The relationship between the magistrates' Case Study welfare and the Case Report scores was not significant at all ($r = -.052$ n.s. 92 df)². Thus, although there were significant differences between the two groups, there was a similar lack of association between the Case Study and Case Report scores.

2. See Appendix IV(d).

All along in this thesis we have argued that the assessment of information as relevant for the purpose of decision-making will ultimately be determined by the predominant frame of relevance espoused by individuals such as panel members and juvenile magistrates. We thought that the assumptions and beliefs maintained by individuals about delinquency causation and delinquency control would find expression in the actual decisions made, for the purposes of this study at least, by panel members and magistrates. Though welfare considerations are important in the Case Studies, and though we do find these expressed in the case Report and Content scores, there seems to be no relationship between them, apart from the fact that the importance of welfare is common to all three scores. A number of the panel members and the magistrates commented, however, that the case studies, though they resembled the kinds of information presented to them, were very different from the actual hearing of a case. The case studies were considered 'abstractions' from the real life situation and 'would give the wrong impression' of how decisions were made. Certainly, there were a number of ways in which the case studies could be considered 'abstractions', e.g. there were no parents, children or social worker to question, only a limited choice of information was presented for assessment as to its importance, there were no other reports available, and the individuals did not have to reach a decision. Thus, although in terms of the general commitment to welfare considerations, the case studies revealed significant differences between the two groups (as was intended), they are not necessarily a good indicator of how individuals will act in a real-life situation. On the basis of the Case Studies, we had expected that welfare considerations in general would underpin the discussion at a panel hearing and also inform the criteria on which decisions were made. This, in fact, happened but with no connection between the Case Studies and the actual cases, at least as far as related to individual's scores. A conclusion that can be drawn then is that, methodologically and theoretically, the weakness of the case study method is its inadequacy to give anything but general indications as to how and for what reasons people make decisions about actual cases. Even where simulated cases have been employed in as authentic a manner as possible, their use has been recognised as having serious limitations (Lemon 1974, p.37). The situated aspect of decision-making makes the hearing of cases in a

panel or a court a very different enterprise from the assessment of constructed cases in isolation from the demands and restrictions of actual hearings.

At the time of the research there had, in fact, been eleven people who had just been appointed as panel members and who had had no experience of actual hearings at all. These eleven were asked to complete the Case Study stage of the research. A number of interesting findings were made and it is perhaps pertinent to discuss them at this stage of the analysis when we are considering the importance of the experience of actual hearings.

Over all the Case Studies, new panel members did in fact indicate by their scores that they attached even greater importance to welfare factors ($\bar{x} = 39.14$) than did those who had gone through the training programme and who also had experience of actual hearings ($\bar{x} = 43.36$)(n.s.). The difference was, however, not significant.

What is interesting, however, is that the 'new' panel members treated the sociological factors of Case A as more important than did the experienced panel members for whom it was the Case in which welfare factors were considered less important than for any other case. Again this may well raise some questions about the impact of the training programme as of the experience of decision-making in hearings, both of which may contribute to a change in individual perception of the status of certain information. Just as the hearing situation confronts panel members with the reality of offence committal, so are panel members presented with the reality of having to deal with behaviour which is perceived to be the result of environmental causes. Only when confronted with this reality may panel members alter their views as to the relevance of certain types of information.

Even the training programme offered to panel members was one in which those professions with an individualistic or case-work orientation were heavily involved with consideration given to wider sociological factors only in so far as it could impinge on individual behaviour. It is particularly interesting in this respect

that the book now (at the time of writing) widely used by panel members in their training (Martin and Murray 1976) is one in which there is no sociological contribution and in which much of the material is provided by psychologists and social workers.

In terms of other factors such as Social Protection, Harm and Personal Responsibility, we found that 'new' panel members were less concerned about the importance of these than were their experienced colleagues. However, in Case E the case referring to the assault, they were more concerned about Social Protection. But, in general, perception of these factors as less important than indicated by their colleagues may well suggest that there is some truth to the belief maintained by a number of panel members that -

" it's a good thing that you can't serve any longer than three years without being reconsidered. You can too easily become 'hard' with these children when you think what they've done."

Discussion

What we wish to return to now is a discussion of our suggestion that the search for information in the panel and court hearings is influenced as much by how information is sought as it is by what information is available. Decisions are theoretically the outcome of the organisation and assessment of information based on the individual's knowledge about resources, treatment and behavioural problems, and on the objectives he hopes to attain. However, the search for relevant information in a hearing is not an individual enterprise, but a collective process circumscribed by the more social and symbolic features of different types of hearings.

In the juvenile court hearings we attended, the Bench did not have much opportunity for open discussion in court, the search for information being more overtly circumscribed by the formality and ritualistic nature of the decision-making process. Reports from various agencies had to be read either in open court or in adjournment with the result that magistrates only had a limited time to familiarise themselves with the material contained in them. Panel members, however, have reports available a number of days before a hearing and therefore have the opportunity to assimilate the material

and to employ this as a 'spring board' for further discussion. One of the consequences of this was that there appeared to be different types of decision-making by panel members, which we can crudely label 'backward' and 'forward' decision-making.

In keeping with the fact that the juvenile court in England in some senses remains a modified court of criminal law, the reports are only available after the acceptance of or finding of guilt. In Scotland, social work and other reports can be, and usually are, prepared before the child has even appeared at a hearing. This obviously gives rise to further considerations of the legal protection available to children. But as regards the decision-making process, with the availability of reports prior to the hearing of a case, panel members may reach some tentative conclusion as to what the decision should be in a particular case. Perhaps this is particularly so when the panel member adopts a more offence-oriented frame of relevance since the bulk of the 'relevant' information will already be available to him (e.g. police charge sheets, grounds of referrals etc.). This may not only apply to individual panel members but to a panel as a whole where prior discussion of a case allows panel members as a group to reach some tacit agreement as to what should be done and how the hearing should be constructed. What we refer to as 'backward' decision-making is that approach in which decisions are tentatively reached in advance of a hearing and where the hearing is used to obtain information that will serve to justify that decision. It is 'backward' since the search for information is dictated by a decision already reached. As we have argued above, panel members, where offence or judicial considerations are important, may also decide prior to a hearing to adopt particular approaches such as lecturing, inducing shame, or employing the 'sword of Damocles' with veiled threats. The hearing then takes on a more symbolic role than perhaps might be expected in an administrative tribunal.

'Forward' decision-making is, we suggest, an approach to decision-making that is more logical inasmuch as it is characterised by the attempt to assess all information prior to the reaching of a decision which is then the conclusion to a widely-based search for information. It is then justified by reference to specific sets of

'relevant' information, leading to specific conclusions about a child's needs and the most appropriate measure. The contribution of parents and children in this form of decision-making is important because the greater level of communication within a panel hearing may well mean that they can influence the decision itself or at least be involved in the whole process. But the general point to be made is that within a system of juvenile justice based upon a welfare philosophy, the availability of information prior to the actual hearing influences the decision-making process, though doubts may be raised about the justice of social work and other reports being prepared before acceptance of the grounds of referral. In the court system, where reports are only available after the finding of guilt, and where the finality of the court setting inhibits open discussion, the search for information is a very different enterprise with most reliance being placed on written reports and the statements of the prosecutor and lawyer.

Perhaps just as significant a characteristic of the actual hearing process is the role played by the chairmen in the hearing. We have already discussed the difference in the Content scores of those who were and those who were not panel chairmen. As a result of discussion with the panel members in the study and also of his involvement in seminar groups with those training to be panel members, the significance of the chairman in directing a hearing became rather obvious to the researcher.³ Not only does he have formal responsibilities and duties (e.g. in the Scottish study area the reading of the grounds of referral), but since only experienced panel members can be chairmen at hearings, their less-experienced colleagues may 'expect some guidance and support'. Nevertheless, some panel members felt that the role of the chairman was too influential since certain individuals 'often abused their position and dominated the proceedings by exerting undue influence or pressure on their colleagues'.

The methodological significance of all this is that it may well point to the inadequacy of the case study method in so far as it fails to cater for the restrictions and peculiarities of the real

3. The researcher attended and was involved in a seminar employing a videotape of a hearing which was used to analyse the role and responsibilities of the chairman.

life situation. The hearing of offence cases at actual hearings may well force more into the open the conceptual ambiguity between welfare and judicial considerations as indicated by subtle shifts in the frames of relevance adopted by individuals and the nature of the hearing process. Dealing with offence cases in actual hearings where the situated aspects of decision-making are important may well account for in part the lack of association between the Case Study and other scores.

The theoretical significance, we argue, is that at the very least it is unwise to divorce the nature of the hearing, whether it be court or panel type of hearing, from the decision-making process as a whole. This is particularly so because the making of decisions in panel and court hearings involves more than one person and because the very hearing itself can become imbued with symbolic significance thus affecting the search for and use made of relevant information.

CONCLUSIONS

It is not new to suggest that there may well be a clash between what we have termed a welfare ideology and a judicial ideology. As we discussed in fact in Chapter IV the historical development of juvenile justice reflects the continued attempt to reconcile the competing claims of the two approaches within a single system of juvenile justice. However what we suggested early in this thesis is that responses to delinquency are determined in part by the manner in which delinquency is conceived. Hence, we argued that an important consideration in dealing with delinquents was the extent to which they could be held to be responsible for their actions. Thus, our examination of the free-will/determinism debate in philosophy was an important preliminary to a consideration of the causal accounts of delinquency offered within the approach best characterised as criminological positivism. What we sought to do was to identify 'available ideologies' which might be the source of frames of relevance employed by those responsible for making decisions about delinquents. A number of points have to be made here.

Firstly, we were not concerned in the earlier part of this thesis simply to point out the salient differences between punishment and treatment. That, as we hope was clear, is too simplistic a dichotomy to be made. Secondly, though we were more concerned with whether human action could be explained in terms of some conception of responsibility or rationality on the one hand and causal accounts of behaviour on the other, our purpose was not purely philosophical. Rather it was to provide the means for analysis of the conceptual frameworks underlying two very different systems of juvenile justice - one in which the judicial, legalistic court structure was maintained and the other in which a social agency or administrative tribunal was seen to be the more appropriate medium of intervention. Thus though the trend has been away from conceiving of the delinquent as a responsible individual and towards deterministic and causal accounts of delinquent action, systems of juvenile justice more often than not reflect a compromise between these competing assumptions.

In England the retention of the juvenile court structure and

the retention of more punitive sanctions was in recognition of the fact that at least some of the children dealt with could be held to be responsible and thereby liable to punishment. The importance of the issue of 'responsibility' is that it allows blame or fault to be ascribed prior to the imposition of either punitive sanctions or welfare measures.

In Scotland, despite the fact that the Children's Hearings were based upon a more overtly welfare ideology, they do not have the monopoly over delinquency control. (Asquith 1979). In Scotland, children can still be prosecuted in a system where the age of criminal responsibility is still eight; children can still go to court to have the facts established if they deny the grounds of referral to a children's hearing; and, surely neatly reflecting the ambiguity and compromise between a welfare and judicial ideology, the right of appeal against a decision by a children's hearing is heard by a sheriff in the first instance.

Our concern then was to examine the extent to which decisions about delinquents reached by those operating within the two systems reflected the competing judicial and welfare ideologies. In one respect then the empirical study has been an examination of the translation of social policy into practice in the context of two very different organisational structures. We were interested then in the extent to which the frames of relevance adopted by lay panel members and lay magistrates in the decision-making process reflected elements of the different ideologies, the implications that this had for the use and assessment of information as well as what was revealed about the different organisational structures in question. The rather simple orienting assumption was that in ordinary moral discourse the question of responsibility is crucial for the ascription of blame and punishment. Our interest was in whether it was important in the making of decisions about delinquents and what implications would follow. In that respect we believe a number of points were established in the course of the empirical study.

Methodologically we were committed to analysing the frames of relevance by which individual panel members and juvenile magistrates assessed and used information for the purpose of decision-making. What we must argue here is that the lack of overall relationship

between the welfare scores attained by the case study method and the other strategies adopted suggests that the situated aspect of collective decision-making in an actual hearing is very different from a simulated exercise. Actual decision-making in a court or panel hearing is a collective process involving other magistrates or other panel members, parents, children and other appropriate personnel. It involves exchanges of information both written and verbal in a rather formal setting. And with particular reference to the panel members, the symbolic use made of the hearing itself suggested that they did in fact ascribe more importance to the fact that the child had done wrong than was expected on the basis of the case studies. In terms of the analysis of the situated aspect of decision-making and the logic-in-use (Cicourel 1968) of the decision-makers our approach may even then not have been sufficiently sensitive for what is a socially constructed event. There is more to a hearing, whether it be a court or a panel hearing, than simply the sum of the different perspectives employed.

In general terms it would appear that the panel members in our study ascribed more importance to welfare considerations than did the more judicially orientated magistrates. The frames of relevance espoused by the panel members were predominantly concerned with the social environmental and personal characteristics of the children. Nevertheless, in terms of the 'available ideologies' of delinquent explanation, both panel members and magistrates, *bearing in mind the caveat discussed above (p.218), ascribed more importance to welfare factors in those cases depicting individualistic explanations than in any of the other cases.*

We suggested earlier that this may well be due to the fact that the welfare approach to delinquency has developed generally within the context of the development of social, and particularly social casework, services. Thus, it is perhaps not surprising that individualistic types of explanation will inform panel members' and juvenile magistrates' decision-making. However, it may also be linked to the question of responsibility or fault in another way. Individualistic explanations as excusing from responsibility may be more acceptable than, *for example,* sociological forms of explanation where the theoretical links between cause and behaviour are less readily made.

But though panel members were more concerned with welfare than

judicial considerations, they did nevertheless indicate that they agreed with magistrates on certain issues. In particular, in the case study stage of the research we saw that Intentionality was almost equally important for both groups of subjects, though for juvenile magistrates this was also correlated significantly with the other personal responsibility factors, Awareness and Consequences. Moreover, where the offence was one of assault on the person there was also less disagreement between the two groups.

In the Case Report section however we found that, despite the earlier *prima facie* agreement about the importance of Intentionality, panel members' decisions were based more on welfare criteria and included no explicit reference to punishment. Magistrates however did, and legitimately so given their role, state their desire to punish amongst the reasons for their decision and were much more concerned with judicial considerations. The implication that we make from this is that the importance of specific considerations, such as Intentionality, has to be gauged in the context of the frame of relevance predominantly and generally employed. Thus, where the frame of relevance is derived from welfare considerations, the concern may be made with the moral development of the child rather than any desire to establish fault or guilt. Similarly the importance for individuals of such factors as previous offence involvement or the number of charges cannot simply be taken to indicate that panel members or magistrates are thereby committed to a punitive philosophy or a tariff approach to decision-making. There is some ambiguity however amongst panel members for whom leniency and mitigation seem to be pertinent concepts.

Institutionally, the welfare and judicial ideologies are more neatly separated for the juvenile magistrates than panel members in that they are legitimately concerned with the issue of guilt or responsibility, are permitted to punish but they can also decide whether a child is in need or not. There are thus stages in the proceedings where 'offence' or 'need' considerations can be divorced. For panel members, the position is more complex since theoretically they are only concerned with the need for compulsory measures of care and their allusions to 'offence' considerations are more subtle than is the case with magistrates. The ambiguity of 'judicial' and

'welfare' ideologies is perhaps more keenly experienced within an administrative system of juvenile justice in which panel members are not formally concerned with the issue of responsibility. Nevertheless, it is an important concept in ordinary moral discourse and we suggest that though not overtly 'judicial' in their orientation, panel members nevertheless still distinguish between those who have committed offences and those who have not. This is particularly so in the hearing of actual cases, about which a number of points of comparison can be made.

Firstly, there is much more discussion in panel hearings than in court hearings and this relates more to welfare than judicial considerations.

Secondly, in panel hearings, parents and children themselves have more opportunity to be involved and there is evidence to suggest that their part in the discussion also focusses more on the social and personal characteristics of the child.

Thirdly, the search for and use made of information in a panel hearing is very different from the court hearing in that the reports can be used as a springboard for discussion in which their contents can be explored with the family and amongst the panel members.

But what is interesting is that despite the more informal approach in the panel hearing, we do in fact find panel members adopting moral tactics which serve to differentiate between offenders and non-offenders. The symbolic use of the hearing and the adoption of moral postures serve to impress on the child, without in any way being overtly punitive, that he has done wrong.

A number of general points can be made. Firstly, we have suggested that panel members and juvenile magistrates, on the basis of this study, employ very different frames of relevance. More concerned with welfare considerations, panel members will interpret information and reports about offenders generally in terms of the need for care rather than in terms of what he has done. Nevertheless, they may well still make subtle distinctions between those who have committed an offence and those who have not in keeping with ordinary moral discourse. Given the lack of basic differences between the two samples in terms of personal characteristics, we would argue that

the greater emphasis in training given to judicial and legalistic matters, and the fact that they also operate in adult courts of criminal law, will make juvenile magistrates more inclined to operate within a judicial frame of relevance in which responsibility is important.

Secondly, there may well be implications for relationships between different bodies within the organisational network of different juvenile justice systems where different groups share, or conversely do not, similar frames of relevance. Thus, in the Juvenile Court in England, there is a closer working relationship between the magistrates and the police than there is between panel members and police in Scotland; in Scotland, on the other hand, there appears to be some evidence that there is more of a shared approach to delinquency control between panel members and social workers than is the case with magistrates who have 'lost power to the social services.'

Similarly, even where groups of individuals may agree on the objectives of delinquency control, there may nevertheless still be disagreement as to the causes of and best means of treatment of delinquency. Thus a number of panel members and magistrates can still refer to psychiatrists as 'trick cyclists' and argue that 'we need an interpreter for psychiatric reports.' Thus, individuals have to work out for themselves what source of information and recommendations is most relevant and this will usually be in keeping with the preferred frame of relevance. A hierarchy of relevance as it were, has to be constructed.

The general point that we are making is that basic differences in the ascription of relevance to prima facie similar information by individuals might also reveal much about the social structure within which they make decisions. Thus, the organisational network of different agencies within any preferred system of juvenile justice may be characterised by different philosophies of delinquency control with implications for organisational co-operation.

Perhaps the last point that we would make is that any attempt to assess or evaluate how a system of juvenile justice is 'working' cannot simply be made on the basis of an examination of the official statistical returns. These are also dependent upon the selective and interpretative activity of the decision-makers and may be poor sources

for evaluation. A further implication is that comparative research on different systems of juvenile justice must recognise the significance of the organisational structure and the conceptual frameworks underpinning the system.

Social policy is translated into practice and implemented only through the interpretative activity of key individuals operating within very different structures. The appropriate source of information about the practical accomplishment of juvenile justice is neither the statute books nor the policy statements but the actual context in which decisions about child offenders are made. The significance of the phenomenological approach to research, though we could not follow its dictates completely in this thesis, is that the activity of individuals has to be analysed within a particular context. The conceptual groundwork for this thesis should not be taken to suggest that more philosophical or theoretical work per se is demanded; rather it has to be assessed with reference to its contribution to the empirical study. Analyses of social policy and social policy research we believe can only benefit from the appreciation that conceptual and empirical work are far from mutually exclusive.

A P P E N D I C E S

APPENDIX I

Statistical Formulae

1. t test

Since we wished to compare the means of samples of less than 50 observations, the small sample t test was generally employed, particularly in the case study analysis. The formula employed was

$$t = \frac{\bar{x}_1 - \bar{x}_2}{\sqrt{\frac{s(x_1^2) - [s(x_1)]^2}{N_1} + \frac{s(x_2^2) - [s(x_2)]^2}{N_2}}} \cdot \frac{1}{N}$$

2. χ^2

Where χ^2 was employed, the formula we used was

$$\chi^2 = \frac{1}{n_1 \times n_2} \sum \left(\frac{1}{a + a^1} (an_2 - a^1n_1)^2 \right) \text{ where } a \text{ and } a^1$$

represent any associated pair and where n_1 and n_2 were the total frequencies

3. Coefficient of Variation

In the attempt to examine the extent to which scores, again particularly in the case study analysis, were scattered about their means, the coefficient of variation was calculated by expressing the standard deviation as a percentage of the mean. The standard formula is

$$V = \frac{100 \sigma}{m} \quad \text{where } m \text{ is the mean of the sample.}$$

APPENDIX IISCOTLAND AND ENGLAND Case studies(a) All scores

	<u>Welfare</u>	<u>Social Protection</u>	<u>Harm</u>	<u>Aware- ness</u>	<u>Conse- quences</u>	<u>Intention- ality</u>	<u>Personal Respon- sibility</u>
<u>All Cases</u>							
PMs	43.36	11.3	11.48	11.64	12.51	9.7	33.85
JMs	52.26	9.06	10.33	9.48	11.84	8.29	29.65
<u>Case A</u>							
PMs	9.67	2.24	2.21	1.97	2.57	1.33	5.88
JMs	10.61	1.87	1.81	1.64	2.71	1.32	5.71
<u>Case B</u>							
PMs	7.91	2.33	2.3	2.3	2.73	2.42	7.48
JMs	9.74	1.77	1.93	1.87	2.48	2.19	6.55
<u>Case C</u>							
PMs	8.64	2.39	2.57	2.52	2.24	1.61	6.36
JMs	10.41	2.	2.19	2.	2.06	1.32	5.44
<u>Case D</u>							
PMs	8.09	2.48	2.82	2.3	2.12	2.18	6.61
JMs	9.58	1.9	2.61	1.97	2.03	1.9	5.9
<u>Case E</u>							
PMs	9.03	1.85	1.57	2.54	2.85	2.15	7.55
JMs	10.93	1.52	1.48	2.0	2.55	1.54	6.06

(b) t values: 'between' scores

	<u>Welfare</u>	<u>Social Protection</u>	<u>Harm</u>	<u>Aware- ness</u>	<u>Conse- quences</u>	<u>Intention- ality</u>	<u>Personal Respon- sibility</u>
<u>All Cases</u>	<u>5.49</u>	<u>3.851</u>	<u>2.532</u>	<u>3.38</u>	1.75	<u>2.64</u>	<u>3.71</u>
<u>Case A</u>	<u>2.307</u>	<u>3.407</u>	<u>2.32</u>	1.36	.98	.08	.558
<u>Case B</u>	<u>4.05</u>	<u>2.02</u>	<u>3.37</u>	<u>2.39</u>	1.78	1.19	<u>2.26</u>
<u>Case C</u>	<u>4.2</u>	<u>2.27</u>	<u>2.93</u>	<u>2.79</u>	.93	1.79	<u>2.95</u>
<u>Case D</u>	<u>4.32</u>	<u>3.26</u>	1.13	1.67	.44	1.51	<u>2.05</u>
<u>Case E</u>	<u>4.59</u>	<u>2.05</u>	.623	<u>3.03</u>	1.5	<u>3.03</u>	<u>4.36</u>

Significant t's are underlined

Case Studies: Panel Case Study Scores

(c) All Scores

	n	Welfare	Social Protection	Harm	Awareness	Consequences	Intention- ality	Personal Responsibility
Male	16	43.75	11.68	11.56	11.12	12.25	9.94	33.31
Female	17	43.29	10.94	11.41	12.12	12.76	9.47	34.35
Age (0-40)	16	42.94	11.75	11.56	11.44	12.37	9.94	33.75
(41-50)	6	43.5	10	12	12	12.33	10.17	34.5
(51+)	11	43.91	11.36	11.09	11.73	12.82	9.09	33.64
Completion of Full-time Education								
16 and under	11	44.45	11	11	12	12.27	9.27	33.54
17 - 20	11	42.45	11.45	11	12.36	13	9.73	35.09
21+	11	43.18	11.45	12.45	10.54	12.27	10.09	32.91
Experience in Youth Work								
Yes	25	44.12	11.04	11.16	11.52	12.4	9.76	33.68
No	8	41	12.12	12.5	12	12.87	9.5	34.37
Member of Caring Profession								
Yes	22	43.36	11.63	11.73	11.23	12.23	9.82	33.27
No	11	43.36	10.63	11	12.45	13.09	9.45	35
Panel Experience								
6 months	9	43.33	11.99	11.99	10.55	12.55	10	33.11
2 yrs. 6 months	5	44	11.2	11.8	11.2	12	10.2	33
3 yrs. 6 months	19	43.368	11.105	11.26	12.263	12.631	8.894	34.26

(d) t values 'within' scores

When controls were maintained for certain variables, there were in fact very few significant differences 'within' Case Study scores. The significant differences were all in relation to Harm and were between those who did and those who did not have experience of youth work ($t = 2.0582$ $p = .05$), and those who had left school before they were 17, compared with their colleagues who had further education ($t = 2.6665$ $p = .02$).

(e) /-

(e) Case Studies: Court Case Study Scores

	<u>n</u>	<u>Welfare</u>	<u>Social Protection</u>	<u>Harm</u>	<u>Awareness</u>	<u>Consequences</u>	<u>Intention- ality</u>	<u>Personal Responsibility</u>
<u>Male</u>	17	52.24	9.	9.76	9.29	11.64	8.06	29.
<u>Female</u>	14	50.07	9.14	10.36	9.78	12.07	8.57	30.43
<u>Age (0-40)</u>	2	48.	10.	9.	12.5	12.5	8.5	33.
<u>(41-50)</u>	7	51.14	9.28	10.57	8.86	12.42	7.71	29.
<u>(51+)</u>	22	51.59	8.91	9.95	9.41	11.59	8.45	29.55
<u>Completion of Full-time Education</u>								
16 and under	16	49.88	8.75	10.	10.06	12.5	8.75	31.37
17 - 20	9	54.5	9.5	9.75	7.87	10.62	7.75	26.25
21+	6	50.86	9.28	10.43	10.	11.71	7.86	29.43
<u>Experience in Youth Work</u>								
Yes	12	47.08	10.	10.67	10.83	12.42	9.08	32.25
No	19	53.89	8.47	9.63	8.63	11.47	7.79	28.
<u>Member of Caring Profession</u>								
Yes	9	49.28	99.43	10.57	10.57	11.71	8.28	30.71
No	22	51.79	8.96	9.87	9.17	11.87	8.29	29.37
<u>Experience in Juvenile Court</u>								
0 - 1 year	4	49.26	9.	10.75	9.75	11.	10.25	31.
2 - 5 years	16	52.312	8.56	9.56	9.312	12.125	8.0625	29.562
5+ years	11	50.545	9.818	10.54	9.636	11.7272	7.909	29.27
<u>Experience in Adult Court</u>								
0 - 5 years	9	51.	9.111	9.0	9.44	11.55	8.66	29.88
6 - 10 years	16	52.06	8.375	9.812	9.375	12.18	8.25	29.76
10+ years	6	49.5	10.833	10.666	9.833	11.33	7.833	29.

(f)

In general, there were very few instances of significant differences in the scores when controls were maintained. Perhaps the most interesting was that between the welfare scores for those who had had experience in youth work ($\bar{x} = 47.08$) and those who did not ($\bar{x} = 53.89$, $t = 3.0835$, $p = .01$). Similarly, still in relation to experience in youth work, those with previous experience had a significantly different Awareness score ($\bar{x} = 10.83$) from those who had not ($\bar{x} = 8.63$, $t = 2.3572$, $p = .05$). What is noteworthy about the other scores in relation to experience in youth work is that, though they only approached significance, there was a distinct trend indicating that those with experience in youth work were generally more concerned with welfare considerations than with any of the more judicially oriented factors.

In relation to Intentionality, what is particularly interesting, though the differences fall short of significance, is that the trend indicated that with increasing experience in both Juvenile and Adult courts, more importance was attached to this factor. Again, though the difference was not significant, those with most experience as panel members had returned the lowest score for Intentionality, thereby indicating its greater importance for them than their less experienced colleagues.

(g) /-

(g) Case Studies: Panel and Court Scores: t values with control maintained

	<u>Welfare</u>	<u>Social Protection</u>	<u>Harm</u>	<u>Awareness</u>	<u>Consequences</u>	<u>Intention-ality</u>	<u>Personal Responsibility</u>
<u>Male</u> (31 df)	<u>3.1815</u>	<u>3.1998</u>	<u>3.117</u>	<u>1.9408</u>	<u>1.2557</u>	<u>2.7419</u>	<u>1.5658</u>
<u>Female</u> (29 df)	<u>3.4736</u>	<u>2.2624</u>	<u>1.5333</u>	<u>2.6835</u>	<u>1.1156</u>	<u>1.0822</u>	<u>2.2088</u>
<u>Age</u>							
0 - 40 (16 df)	1.1279	.8858	1.9338	.507	.125	.907	.2328
41 - 50 (11 df)	<u>2.7812</u>	.5725	1.749	<u>2.3265</u>	.0985	<u>3.5619</u>	1.9609
51+ (31 df)	<u>3.3743</u>	<u>3.1016</u>	1.62	<u>2.5388</u>	<u>2.0563</u>	.7266	<u>2.323</u>
<u>Completion of Education</u>							
Under 16 (25 df)	<u>2.6057</u>	<u>2.4905</u>	1.4455	<u>2.1956</u>	.4283	.6329	1.3708
16 - 20 (18 df)	<u>5.116</u>	1.728	1.6817	<u>2.5517</u>	<u>3.1815</u>	<u>1.8276</u>	<u>4.9773</u>
20+ (15 df)	<u>2.3147</u>	1.9336	<u>2.2716</u>	.3375	.7734	<u>2.3144</u>	1.326
<u>Experience in Youth Work</u>							
Yes (35 df)	1.6908	1.2612	.8382	.7094	.0358	.9652	1.0146
No (25 df)	<u>5.4869</u>	<u>4.1757</u>	<u>3.8926</u>	<u>4.0281</u>	1.8633	1.8196	<u>3.4779</u>
<u>Member of Caring Profession</u>							
Yes (29 df)	<u>2.3073</u>	1.9429	1.8853	.5278	.9829	1.6992	1.3411
No (31 df)	<u>4.0908</u>	<u>2.3114</u>	1.3975	<u>4.1258</u>	<u>2.0058</u>	1.4518	<u>2.5278</u>

Significant t values are underlined

APPENDIX III

Case Report Scores(a) Case Report Scores: Differences between Panel and Court

	Panel	(n)	Court	(n)	t	p
All scores	69.92	(90)	51.76	(96)	6.8301	.001
Male	69.33	(38)	55.33	(44)	3.5105	.001
Female	70.65	(52)	48.78	(52)	6.14	.001
Age 0-40	68.32	(44)	48.61	(8)	3.8606	.001
41-50	67.66	(10)	52.42	(26)	1.8958	.1
50+	72.51	(36)	51.89	(62)	5.0637	.001
Completion of Education						
Under 16	66.57	(34)	58.95	(28)	1.7194	.1
16 - 20	72.94	(29)	43.08	(27)	6.8559	.001
20+	70.92	(27)	44.49	(21)	5.9716	.001
Experience in Youth Work						
Yes	70.15	(64)	52.90	(28)	4.4798	.001
No	69.3911	(26)	51.26	(68)	4.0664	.001
Member of Caring Profession						
Yes	69.78	(58)	45.32	(26)	5.8294	.001
No	70.13	(32)	52.94	(68)	4.1594	.001

What this table indicates is that the overall difference between the panel and court Case Report scores is repeated, with one or two exceptions, when we controlled for specific variables. Moreover, as we discussed in Chapter VIII, there were no significant differences within the respective groups and therefore the generally different Case Report scores between the samples have to be appreciated in the absence of any material differences within the samples.

When we examined the length of experience of panel members and magistrates, though it was difficult to make meaningful comparison between scores, the within scores again revealed no significant differences.

Panel Members

<u>Length of Experience</u>		<u>n</u>
6 months	68.77	(24)
2 years 6 months	61.95	(12)
3 years 6 months	70.86	(54)

Magistrates

<u>Length of Experience</u>	<u>Adult Court</u>	<u>n</u>
0 - 5 years	50.96	(24)
6 - 10 years	51.82	(46)
10+ years	52.608	(19)
	<u>Juvenile Court</u>	
0 - 1 year	55.39	(3)
2 - 5 years	53.58	(49)
5+ years	48.374	(37)

(b) Judicial factors treated as important for decision-making:
panel and court t-values

	<u>Social Protection</u>	<u>Seriousness</u>	<u>Harm</u>	<u>Awareness</u>	<u>Consequences</u>	<u>Intentionality</u>
1+ charges	.891	.1563	2.168	n.s.	n.s.	1.915
1 charge	<u>3.1464</u>	<u>4.953</u>	.712	<u>2.716</u>	<u>2.57</u>	1.286
Theft	n.s.	<u>2.09</u>	1.311	n.s.	<u>2.434</u>	<u>2.2803</u>
Theft x H.B.	1.407	1.883	1.658	n.s.	n.s.	1.165
No previous offences	1.922	.705	.9525	n.s.	.5006	1.893
1 or more previous offences	<u>2.537</u>	<u>2.409</u>	1.672	1.529	1.008	<u>2.074</u>

Significant t's are underlined

(c) /-

(c) Reasons for decisions

	<u>Scotland</u>	<u>England</u>
Child-oriented	52	25
Family-oriented	31	18
Parental control	28	21
Home/Area conditions	2	12
Schooling	13	-
Truancy	12	1
Reports	-	8
Suitability/Availability of Resources	2	-
Nature of offence:		
General	4	11
Trivial	8	2
Serious	5	1
Nature of child's involvement	6	2
Previous record	3	5
1st offence	4	12
Bring home nature/ offence	-	1
To punish	-	1
To deter offender	-	3
To give a short, sharp shock	-	5
Prevent crime	-	11
Protect public	-	3
Past disposals/measures	11	4

APPENDIX IV
Content Scores

(a) Panel Content Scores

	<u>n</u>	<u>Content \bar{x}</u>
<u>All</u>	(90)	69.121
<u>Male</u>	(38)	68.487
<u>Female</u>	(52)	79.403
<u>Age</u>		
(0-40)	(44)	66.174
(41-50)	(10)	71.159
51+	(36)	72.158
<u>Completion of Education</u>		
0-16	(34)	70.4726
17-20	(29)	77.658
21+	(27)	58.493
<u>Panel Experience</u>		
6 months	(24)	68.777
2 years 6 months	(12)	61.959
3 years 6 months	(54)	70.8666
<u>Youth Experience</u>		
Yes	(64)	69.272
No	(26)	68.75
<u>Caring Profession</u>		
Yes	(58)	65.142
No	(32)	76.335
<u>Chairman</u>		
Yes	(30)	63.22
No	(60)	71.34

(b)

When we examined for significant differences within the panel scores we found that only in two cases were the t-values significant. These were for the difference between the scores for Members of Caring Professions and those who were not ($t = 1.8539$, $p = .05$), also those who had left school before their seventeenth birthday had a

significantly different (and higher) mean than for those who had pursued further education ($t = 1.737$, $p = .05$). The difference, however, was only just significant.

(c) Panel Members: All Welfare Scores Correlated

	<u>n</u>	<u>Case Study: Case Report</u>	<u>Case Study: Content</u>	<u>Case Report: Content</u>
All (90)	90	.079	.028	<u>.224</u>
Male (38)	38	.16	-.022	.073
Female (52)	52	-.009	.105	.342
<u>Panel Experience</u>				
6 months (24)		.293	-.29	.223
2 yrs 6 mths (12)		<u>-.467</u>	.136	.42
3 yrs 6 mths (54)		.166	<u>.288</u>	.143
<u>Age</u>				
0 - 40 (44)		.186	.117	.207
41 - 40 (10)		.024	-.34	.535
51+ (36)		-.144	-.145	.178
<u>Completion of Education</u>				
16 and under (34)		.007	-.1	.241
17 - 20 (29)		-.114	-.224	<u>.428</u>
21+ (27)		.283	.211	.038
<u>Member of Caring Profession</u>				
Yes (58)		.060	.0873	.152
No (32)		.136	-.075	<u>.367</u>
<u>Youth Experience</u>				
Yes (64)		.132	-.017	.193
No (26)		.128	.2234	.308

Significant correlations are underlined

(d)

Because of the lack of comparable hearing analysis in the court area, only the Case Study and Case Report welfare scores could be correlated.

Court: All Welfare Scores Correlated

	n	<u>Case Study:</u> <u>Case Report</u>
All	(96)	-.052
Male	(44)	.067
Female	(52)	.1915
Age: 0-40	(8)	-.445
41-50	(26)	-.3363
51+	(62)	.1322
Completion of Education:		
16 and under	(28)	-.114
17 - 20	(27)	.2102
21+	(21)	.237
Juvenile Court Experience:		
0 - 1 year	(3)	-.3224
2 - 5 years	(49)	-.015
5+ years	(37)	.3006
Adult Court Experience:		
0 - 5 years	(24)	.202
6 - 10 years	(46)	-.189
10+ years	(19)	.1087
Caring Profession		
Yes	(26)	.254
No	(68)	.134
Youth Experience		
Yes	(28)	<u>.5395</u>
No	(68)	-.2288

Significant Correlations are underlined.

APPENDIX V(i) Case StudiesCASE STUDY 'A' (SOCIOLOGICAL/ENVIRONMENTAL DETERMINISM)

James Green, 99 Lowvale Road, Hightown Estate, Charington (Age -14)

James lives with his parents and sisters in a council house in Hightown Estate, where there is a high level of anti-social behaviour. Many of the houses have been damaged as a result of vandalism and James' own house has been without electricity for some months because the family were unable to pay the bill. His father has been unemployed for four months and this may also explain the recently incurred rent arrears. As with many families in the area, the Greens are receiving assistance from the social services department.

School reports indicate that James is not without ability, but that he lacks the motivation to concentrate on his studies and eagerly awaits the day, two years hence, when he can leave school to find a job.

According to the social worker, the financial and living circumstances of the family have been creating strain in the relationships between the different individuals in the household. James may therefore not be receiving the guidance and control he needs.

Recreational facilities in the area are of a poor quality and indeed most have been closed due to vandalism and gang fights. James spends most of his time with his friends just walking about the streets with no particular purpose in mind. The majority of his friends are known to the police. He shares his father's and associates' distrust of authority, especially the police, who are seen as patrolling the Estate in order to 'pick up' youths like James at the slightest chance. However, his association with local gang elements is giving rise to concern, in that prior to the Green's move to the Estate, some three years ago, he had never been in trouble with the police.

He states that the offence was committed by him in company with his friends, all of whom wanted to go to Hopkirk to see their football team, Armingham Thistle, play. Since none of them had sufficient money to pay their fares to the game, James suggested that they 'arrange' their own transport. He knew of a man whose family were on holiday and that the man himself worked nightshift. When he was at work his car was left unattended outside the house. On the night they wanted to leave for the match, James organised two of his friends to keep watch while he and another stole the car. He knew how to cross the ignition wires with silver paper and so did not need the appropriate key. Entry to the car was just as simple, since the quarterlight was easily forced with a screwdriver. After the match and on their way home, they decided that it would be best to abandon the car and in doing so, drove it through a fence into an orchard. The car was considerably damaged and would cost £400 to repair.

Although they made off at the time, they were later apprehended by the police who were given a description of the boys by a witness to the crash.

CASE STUDY 'A'

1. He was well aware that what he was doing was against the law.
2. He comes from an area where there is a high level of anti-social behaviour.
3. His family is in a bad financial position.
4. He should have anticipated the consequences of being caught.
5. Living conditions generally are extremely poor in the estate.
6. Society has a right to protection.
7. James initiated and planned the whole affair.
8. His associates have been in trouble with the police previously.
9. This incident resulted in considerable damage to property.
10. There are no recreational facilities in the estate.

CASE STUDY 'B' (PSYCHOANALYTIC DETERMINISM)

William Black, Fotheringham Children's Home (Age -13)

Willie was removed from his parental home at the age of five on the advice of the social worker who was involved with the family. His father was a chronic alcoholic who was unable to give the necessary emotional support to his wife who was virtually left to raise Willie and his younger brothers on her own. Mr Black's alcoholism also meant that he could not provide the material requisites for bringing up his family. Due to financial and emotional pressures, Mrs Black had a nervous breakdown when Willie was only about one year old. While she was in hospital, all her children were looked after in separate foster homes, and Willie apparently experienced his separation from his mother as most traumatic. When Mrs Black returned from hospital, it took Willie some time to settle down and he began behaving in an extremely aggressive manner towards his mother. This situation improved slightly with time but deteriorated again when Mrs Black left home because she felt her husband's excessive drinking becoming too much for her. The children were once more split up and sent to Children's Homes temporarily.

Mrs Black returned after a period of one year but the social worker decided that, because she was still showing signs of her nervous condition, she was unable and apparently unwilling to care for her children or to show them love and affection, the children should therefore be removed from the parental home on a permanent basis.

For different reasons, some administrative and some arising from Willie's own personal problems, he has been taken care of in various homes. In this way, and as a result of his enforced separation from his mother, he has experienced rejection in many different forms.

According to the report from the house in which Willie is at present, he is something of a problem. He attaches himself to no one in particular but forms shallow relationships with anyone who happens to be available. Moreover, his behaviour shows various signs of regression, including bedwetting. He does not seem to have sufficient self control but rather acts on impulse and for immediate gratification. Nor does he accept the most ordinary discipline, but is easily frustrated if he does not get his own way. His school report emphasises the disruptive effect his behaviour has on the rest of the class.

Willie says that it was not his idea to break into the school but that he was asked by some of his friends to go with them. This he decided to do, although he did state to the social worker that he knew it was wrong to do so. Once inside the school, however, Willie took an active part in the destruction that followed, and actually led the others to what seemed to them to be a music room. In this class room they hammered tape recorders and musical instruments with billiard cues taken from the games room. Generally, they ran through the school continuing to destroy property.

When they came to the science laboratories, they broke a considerable amount of apparatus before they found a cupboard containing methylated spirit. This they used to start a small fire with some jotters, but when the fire got out of hand, they left the school premises and stood at the perimeter fence, waiting until the fire brigade came. Total cost of the damage to the school was £12,000.

CASE STUDY 'B'

1. He was not forced to go with his friends but went through choice.
2. Extensive damage resulted from the fire.
3. In his formative years, his life was spent in an unstable home environment.
4. He knows the difference between right and wrong.
5. Consideration must be given to the protection of public property.
6. Since he was five, he has been in the care of the local authority in a Children's Home.
7. He well knew what would happen if he were caught.

8. He is only able to form superficial relationships with others.
9. On several occasions, he has experienced rejection.
10. He acts on impulse and is easily frustrated.

CASE STUDY 'C' (PROCESSUAL DETERMINISM)

Jimmy James, 4 Provost Road, Lamington (Age -15)

Last year Jimmy was placed under the supervision of the social services department for his part in a fight between rival football supporters in which a youth was stabbed quite seriously. The present offence occurred while he was still under supervision.

Since he was dealt with for the last offence, far from benefitting from his period of supervision, Jimmy's behaviour has deteriorated considerably. His previous offence, up to which he had never been in trouble before, came as quite a shock to his parents, who are both well known in the area, his father being a prominent member of the church. Apparently, since then they have used the name 'delinquent' in addressing Jimmy any time he does not comply with their wishes. They also require him to be in at nine o'clock although his sister is allowed to stay out longer because she is more 'trustworthy'.

At school, where he was doing quite well before this first offence, the teacher would refer to him as a young tearaway in front of the class and repeatedly warns the other children that they will turn out like Jimmy James if they do not keep out of trouble. Jimmy has reacted in a way which he thinks shows his contempt - by living up to his delinquent tag. He now bullies other young children at school and has started associating with a crowd of boys who are constantly in trouble with the police. Since then his former friends have been prohibited by their parents from meeting him and as a result he has tended to seek companionship amongst an anti-social element in the area. He has been blamed at school, and in the neighbourhood for things of which he had no knowledge, but which were readily attributed to him because of his reputation.

The police are keeping a close watch on him and he is amongst the first to be 'picked up' and questioned when an offence has occurred. Perhaps as a result of this, he now frequents the adjacent housing estate in which his new found friends live and in which anti-social behaviour is readily entered upon. He has adopted their dress of denim jacket, jeans and boots in preference to his school blazer and more casual clothes. His parents now feel that he is incapable of spending money wisely on clothes and so have reduced the amount he gets as an allowance.

He and his friend had made up their minds to break into a factory which was quite near their home. Although the factory had closed down some time ago, it was left standing intact until the new owners arrived. Guard patrols make regular rounds in the property immediately

surrounding the factory. Jimmy and his friend therefore had to watch the factory for two or three weeks prior to the offence, in order that they could work out the safest time to break into the factory, without risk of being caught. Since the factory had been engaged in the manufacture of plumbing equipment, lead was extensively used and some deposits of it remained scattered about the factory floor. It was the lead which Jimmy and his mate were after, since they could sell it below market price to local scrap dealers without too many questions being asked as to its origins. They were both aware of the risks involved but felt sure that they could get away with it.

They cut through the mesh fence surrounding the factory with wire clippers and made their way to a side door where the friend used a steel ruler to open a yale lock. Once inside, it was an easy matter to collect the lead and put it into a sack but as they were doing this, they heard the sound of a patrol, with a dog, making a tour of inspection of the factory. Both made a dash for the fence and only managed to scramble over it without being caught, but not before a patrolman saw them and was later able to give their description to the police. Not only did they fail to get the lead off the premises, but they were also apprehended by the police that very night.

CASE STUDY 'C'

1. He is old enough to know the difference between right and wrong.
2. He has been forced to seek companionship amongst the gang element.
3. Since his previous offence, he has been treated as if he were untrustworthy in all respects.
4. A deliberate decision was made by him to break into the factory.
5. The offence involved damage to property.
6. He is always amongst the first to be questioned if an offence is committed.
7. He was aware of the consequences of being caught.
8. Seen by others simply as a delinquent, he is forced to behave as one.
9. He takes the blame for many things of which he has no knowledge.
10. Protection of property has to be given due regard.

CASE STUDY 'D' (BEHAVIOURISM)

Charlie White, Birdfield Avenue, Farnton (Age -15)

Charlie comes from an area of Farnton in which there is considerable anti-social behaviour and frequent confrontation between the police and the local criminal element. Charlie associates with many of those who have been in trouble with the police and with one of them committed the offence which constitutes the present ground for referral.

Mike, Charlie's friend, had remarked that he was short of money and needed some to buy new clothes. Charlie suggested that they could 'raise' the money by stealing some goods from the local Woolworth's store, then selling them. To many of their friends, the department stores offered many opportunities for theft with little risk of being caught. They decided that they would take a tape recorder since it was light enough to carry and was likely to be in demand by various unscrupulous buyers. They then worked out a plan for executing the theft.

According to the social worker who was given the account, Charlie was to act as a decoy while Mike was to be the one who actually stole the tape recorder. It was to be from Woolworth's because, unlike the other larger stores, the arrangements for the protection of goods were known by them to be very poor. They went into the store and while Mike made his way to the appropriate counter, Charlie asked the attendant if he could see the record players on the pretence that he wanted to buy one. Meantime, Mike had begun to handle the cassette tape recorders and when he was sure that he was not being observed and that Charlie had managed to distract the attendant's attention sufficiently, he slipped one inside his denim jacket. He then walked out. When Charlie saw this, he 'decided' that he did not like the record players shown to him and also made his way out. However, both boys had in fact been watched on a concealed closed circuit television and were caught at the door.

It seems that Charlie has acquired his distrust of authority from his father, a building labourer, who has himself been in trouble with the police. When Charlie was younger, his father used to live away from home because his work at that time involved travelling. Mrs White was left on her own to look after Charlie, but because she was also working, there were many occasions when he was allowed to do simply as he pleased. When his father was at home, he was more inclined to punish Charlie physically than was Mrs White who used to bribe her son with sweets or extra pocket money. This pattern of inconsistency is reported in a social work report as being general throughout Charlie's upbringing, as a result of which he is inclined to act on impulse and from selfishness. It was during his adolescence that he began to associate with the delinquent element of the area in which he lived, and during which his distrust of authority was strengthened.

Most of his participation in crime has been aimed at obtaining the benefits of material possessions, as well as winning for him high esteem in the eyes of his friends who see his flaunting of authority as something to be admired. The fact that there exist law enforcing agencies does

little to modify his belief that crime pays. Rather, he now views his criminal activities as a source of material and personal reward. He scorns the police and it is likely that his future will be one of frequent contact with the law. If it is not impressed on him that, in the long run, anti-social behaviour does not pay, he will be tempted to participate in more serious behaviour in the belief that he will for the most part escape the consequences.

CASE STUDY 'D'

1. Though aware of the consequences of being caught, he felt he could escape them.
2. His parents were inconsistent in disciplining him in childhood.
3. He was well aware that what he was doing was against the law.
4. The area in which he lives has a high incidence of anti-social behaviour.
5. Charlie himself suggested that he be a decoy in the theft.
6. He has lacked the opportunity for learning socially acceptable behaviour.
7. His attitude of hostility to authority is reinforced by contact with others of similar mind.
8. The item stolen was of some value.
9. The status he enjoys amongst his friends makes him participate even more in crime.
10. Society needs protection from theft.

CASE STUDY 'E' (BIOLOGICAL DETERMINISM)

Brian Brown, 6 London Road, Kirkhaven (Age -15)

On the night of the offence, Brian and his gang, of which he is leader, were walking the streets of Kirkhaven at about 10 o'clock. At this time, the pubs began to empty and a number of the patrons were walking home. According to Brian, he and a few of his friends followed two men, who appeared the worse for drink, oversome common ground where there were few lights. Their aim was to rob the men whom they supposed to be incapable of defending themselves. When the time seemed right, they stopped the men and demanded money or else they would 'do them in'. However, the men refused to hand over the money despite the threats and started to hit out at the youths. Some of them ran away but Brian stood his ground and, according to his own report, took out a steel comb which was sharpened at one end, whilst the other was covered with insulating tape to act as a handle. He then began to fight with one of the men,

inflicting injuries on him which later required several stitches. He was however, unable to use the makeshift knife, but injured the man with his fists and feet.

The account of the fight given by the men included the statement that, while one was chasing what remained of Brian's gang, Brian was fighting with the other using heavily booted feet. According to them, he seemed to have lost control of himself and even when he was being restrained by both men till the police arrived, he began to struggle violently. They did not recollect actually seeing the steel comb and it can only be assumed that Brian, not having the opportunity to use it, and well aware of the consequences of possessing it, had hidden it on his person before the police arrived. However, it was found on him during a search in the police station.

Brian's father had died when he was two and his mother had remarried shortly after. Mr and Mrs Brown have three children by this marriage, none of whom display the same aggressive tendencies as their half brother, Brian.

Mrs Brown stated that her first husband, Brian's natural father, was an extremely aggressive man whose temper got him into considerable trouble. She feels that Brian is, in this respect at least, very similar in nature to his father.

Brian had been an extremely demanding baby in that he had cried a lot from his earliest days and needed continual attention from his mother. When he was a toddler, frustration of his immediate desires brought on particularly severe bouts of temper. In later childhood, discipline was never readily accepted by Brian without resulting in expressions of anger and temper tantrums. Mrs Brown feels that she looked after him as well as she could and is convinced that she provided him with sufficient emotional warmth as well as having adequately met his material needs. But she herself received little sign of affection from Brian.

When he was seven, Brian had a pet rabbit which he teased, for no other reason apparently, that that he enjoyed doing so. Later he began to treat it rather cruelly and actually brought about its death.

At school, his tendency to slip into violent behaviour without much provocation is recorded as having a disruptive effect on the whole class as well as hindering his own development. He has attended remedial classes throughout his educational career. Outside school, his inclination to hostility made him the natural leader of a gang of boys amongst whom his fierce fighting ability was not only respected but feared.

According to the social worker who visited the family, Brian is without shame or remorse for what he did to the victim of his attack and has by all accounts never been known to have shown these emotions in relation to any of his behaviour.

CASE STUDY 'E'

1. The injuries he inflicted on the older man were quite serious.
2. By nature, Brian is extremely aggressive.
3. There is a history of aggression in Brian's childhood.
4. As leader of the gang, it was his decision to attack the man.
5. The public must be protected from such offences.
6. He has inherited his father's aggressive temperament.
7. He is well aware that it is illegal to carry an offensive weapon.
8. Frustration easily arouses his extremely aggressive temper.
9. He has never been known to show remorse or shame.
10. He knew fully the consequences of being caught.

(ii) In all cases, as can be seen from the statements following each case study, all children took deliberate decisions to be involved in the offence and all children were aware of the wrongful nature of their action. However, the offences were of different types and involved different consequences. In summarised form these were:

Case A Theft involving considerable damage to the value of £400.

Case B Malicious Damage involving considerable damage to the value of £12,000.

Case C Theft by Opening Locked Premises involving minimal damage.

Case D Shoplifting.

Case E Assault on the Person involving serious injuries

(ii) Case Report

NAME: CASE (indicate by offender's initials)

SECTION A

1. Briefly, what were the main reasons for the decision?
2. Was the decision influenced by

(a) The availability of suitable resources Yes/No

(b) Statutory restrictions Yes/No

(In both cases delete as appropriate)
3. Did you agree with the actual decision reached? Yes/No
4. If not, why not?
5. Given ideal resources what would your decision have been?
6. For what reasons.
7. Indicate by placing a tick in the appropriate box whether you thought that, for the purpose of reaching a decision in this case, the available reports were Very informative, Fairly informative or Not informative about the offender's background and circumstances. Similarly, if any report available to you made a recommendation as to the appropriate disposal of the case, indicate whether, on the whole, you Agreed or Disagreed with that recommendation.

	Very Informative	Fairly Informative	Not Informative	Recommendations	
				Agreed	Disagreed
Social work report					
School report					
Psychological report					
Psychiatric report					
Others					
.....					
.....					
.....					

Summing up by chairman

Decision: _____

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The following abbreviations have been adopted in the composition of the bibliography.

A.C.L.R.	American Criminal Law Review
A.J.S.	American Journal of Sociology
A.S.R.	American Sociological Review
B.J.C.	British Journal of Criminology
B.J.D.	British Journal of Delinquency
B.J.L.S.	British Journal of Law and Society
B.J.S.W.	British Journal of Social Work
C.L.R.	Criminal Law Review
H.L.R.	Harvard Law Review
L.Q.R.	Law Quarterly Review
P.S.R.	Pacific Sociological Review

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